

DATE: March 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-13626

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a long history of financial difficulties, including significant debts for past due Federal and state taxes. These debts have not been resolved. Applicant knew or should have known that the information that she provided to the Government in a Security Clearance Application (SCA) in 1998, regarding her financial situation, was materially incorrect and incomplete. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On August 27, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) 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 conduct proceedings and determine whether clearance should be granted or denied.

In a signed and sworn statement, dated October 14, 2003, Applicant responded to the SOR allegations, and she requested a clearance decision based on a hearing record.

This case was assigned to this Administrative Judge to conduct a hearing and issue a written decision on January 15, 2004. A Notice of Hearing was issued to the parties on February 2, 2004, and the hearing was held on February 26, 2004.

At the hearing, Department Counsel offered twenty five documentary exhibits (Exhibits 1-25) and no witnesses were called. Applicant appeared without counsel, offered two documentary exhibits (Exhibits A and B) and offered her own testimony. All documentary evidence was entered into evidence without objection. After the hearing, the record was left

open for Applicant to offer additional documentary exhibits regarding her bankruptcy and alleged payment of other debts. Applicant failed to offer any additional evidence. The transcript (TR) was received on March 11, 2004.

FINDINGS OF FACT

In her Answer, Applicant admitted the SOR allegations (subparagraphs 1.g - 1.m). Applicant denied the SOR allegations subparagraphs 1.a - 1.f. and 2.a. - 2.c. Applicant's admitted allegations are incorporated by reference as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the testimony of Applicant at the hearing, and the documents, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is a 47 year old employee of a defense contractor employee which seeks a security clearance on behalf of Applicant. She is separated from her current husband, and she has three children.

Paragraph 1 (Guideline F - Financial Considerations)

Applicant owes Federal Income taxes for the tax years 1994 through 2002. As of May 1, 1998, she owed \$8,868.27, and at that time she received a notice from the Internal Revenue Service (IRS) that her wages were to be garnished (Exhibit 19). While there is no documentary evidence as to how much, if anything, was actually paid to the IRS, Applicant testified that she did pay \$1,000 on this debt. She also testified that she owed an additional amount for tax years 1999 through 2002 (Tr at 30-33). There is no evidence as to what the total amount is that is now owing in Federal Taxes by Applicant.

Applicant owes state income taxes for tax years 1993 through 2002. She owed approximately \$21,248.00, but she has begun making payments of \$700 a month for two months. She currently owes \$19,848 (Tr at 26-30, Exhibit A).

Applicant filed a Chapter 13 bankruptcy in 1995, 1996, and 1997 (Exhibits 8, 9, 10). It appeared that all of the bankruptcies were dismissed, and none of Applicant's debts were discharged in bankruptcy. However, Applicant testified at the hearing, that one bankruptcy was completed, and that her debts were discharged in bankruptcy (Tr at 34, 35). Despite holding the record open for Applicant to introduce records concerning her completed bankruptcy, no records regarding a completed bankruptcy were ever introduced by Applicant.

A judgement was issued against Applicant in 1997 in the amount of \$1,122, for writing checks with insufficient funds. This debt was paid off through a garnishment of Applicant's wages by the creditor (Exhibit 22).

Applicant was delinquent on a credit card debt in the approximate amount of \$1,132. This debt has been settled (Tr at 35, 36).

Applicant was delinquent on a credit card debt in the approximate amount of \$647. This debt has been settled (Tr at 37-40).

Applicant was delinquent on a credit card debt in the approximate amount of \$658. This debt has been settled (Tr at 41-43).

Paragraph 2 (Guideline E - Personal Conduct)

Applicant completed a signed, sworn Security Clearance Application (SCA) on November 16, 1998.

Question #37 asks, "In the last 7 years, have you had any judgements against you that have not been paid?" Applicant answered "No" to this question. At the time she completed the SCA, Applicant was delinquent on a judgement from 1997 in the amount of \$1,122, as alleged in 1.e. of the SOR. She should have answered "yes" to this question and referred to this judgment.

Question #38 asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "No" to this question. At the time she completed the SCA, Applicant was delinquent on all of the debts discussed above, and she should have answered "yes" to this question and included the debts listed in the SOR.

Question #40 asks, "In the last 7 years, have you been a party to any public record civil court actions not listed elsewhere on this form?" Applicant answered "No" to this question. At the time she completed the SCA, Applicant was delinquent on a judgement from 1997 in the amount of \$1,122, as alleged in 1.e. of the SOR. Applicant should have answered "yes" either to this question or to question #37 and referred to this judgment.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented.. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

(Guideline F - Financial Considerations)

E2.A6.1.1. The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

E2.A6.1.2. Conditions that could raise a security concern and 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;

E2.A6.1.3. Condition that could mitigate security concerns include:

None

(Guideline E - Personal Conduct)

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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

E2.A5.1.2. Condition that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, falsification or misrepresentation 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;

E2.A5.1.3. Condition that could mitigate security concerns include:

None.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

(Guideline F - Financial Considerations)

The government has established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness. It shows Applicant has a history of financial difficulties. The debts to the Federal and to a state government for past overdue taxes have not been resolved and are still due and owing. While three bankruptcies were filed there is no evidence that any of the overdue debts were or will be discharged.

Applicant's overall conduct pertaining to her financial obligations falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3. (A history of not meeting financial obligations, and an inability or unwillingness to satisfy debts). I find that no Mitigating Condition (MC) is applicable to this case.

Applicant appears to have finally begun to make a good-faith effort to resolve some of her indebtedness. However, since the Applicant's debts to the Federal and state governments have not been resolved, I cannot conclude that Applicant's financial problems are behind her. Until her debts are paid, and she can establish a record of financial responsibility and stability, security concerns will continue to exist under Guideline F. I resolve Guideline F against Applicant. **(Guideline E - Personal Conduct)**

With respect to Guideline E, the evidence establishes that Applicant intentionally provided false material information to the Government in response to questions #37, 38, and 40 on the SCA she executed in November 1998. Additionally, while it was not alleged in the SOR, Question #39 asks, "Are you currently over 90 days delinquent on any debt (s)?" Applicant answered "No" to this question. At the time she completed the SCA, Applicant was delinquent on all of the debts discussed above, and she should have answered "yes" to this question and included all of the debts listed in the SOR.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that she nevertheless possesses the judgment, reliability and trustworthiness required of clearance holders.

In reviewing the DCs under Guideline E, I conclude that DC E2.A5.1.2.2. applies because the information that Applicant provided in her SCA was known or should have been known by her to be omissions and concealment of

relevant and material facts. Applicant did not offer any evidence that could have explained the answers she gave on the SCA. No MCs apply.

In this case, Applicant failed to offer any independent evidence indicating that she has reformed and is now reliable and trustworthy. This precludes a finding that it is now clearly consistent with the national interest to grant her access to classified information. I resolve Guideline E against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant.

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

DECISION

In light of all 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.

Martin H. Mogul

Administrative Judge