

DATE: July 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-14700

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Julie R. Edmonds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 60-year-old employee of a defense cleaning services contractor, failed to pay federal and state income taxes for eight years. After being discharged in bankruptcy in 1997, Applicant incurred \$4,200 in credit debit, which has not been paid. Applicant recently made arrangements to pay the credit debt and has started repaying the back taxes. Applicant has not mitigated the security concerns arising from her financial difficulties. Clearance is denied.

STATEMENT OF THE CASE

On January 28, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR details 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.

Applicant submitted her February 10, 2005 and March 1, 2005 notarized responses to the allegations, where she admitted all the allegations and provided additional information. Applicant did not request a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extension, or mitigation. She did not submit additional evidence. This case was assigned to me on July 18, 2005.

FINDINGS OF FACT

Applicant has admitted with explanation all of the allegations in the SOR. After a complete review of the evidence and upon due consideration of the record, I make the following additional findings of fact:

Applicant, who is 60-years-old, has worked for a defense cleaning services contractor for seven years.⁽¹⁾ She previously worked for the federal government where she held a top secret security clearance.⁽²⁾

Applicant is separated from her husband and has no dependent children.⁽³⁾ Although she did not list any children in her 1999 security application, she states that her financial situation has resulted from raising three children, caring for her mother, and her poor health problems.⁽⁴⁾ She was diagnosed with and treated for breast cancer in 1996 and has been diagnosed with diabetes recently.⁽⁵⁾ Her mother died in February 2001.⁽⁶⁾ She states that she missed time from work when her mother died in 2001 and for cancer treatment, and thus, was unable to make the necessary payments on her debts.⁽⁷⁾ She has provided no documentation on the dates or length of time she missed from work when her mother died or for her recent health issues, nor has she indicated any loss of income for this lost work time.

She currently earns \$16.80 per hour.⁽⁸⁾ Her earnings and leave statement indicates she is paid biweekly, her current gross pay is approximately \$3,155 per month and her net pay is \$2,248 per month.⁽⁹⁾ Her current monthly expenses total \$2,540.⁽¹⁰⁾

From 1993 through 1997 and again from 1999 through 2001, Applicant failed to pay the appropriate federal income taxes.⁽¹¹⁾ The Internal Revenue Service (IRS) filed three tax liens against her in the appropriate state court, two in 1996 and one in 2003, for the unpaid taxes.⁽¹²⁾ These tax liens have not been fully paid.⁽¹³⁾ Prior to 2002, as a payroll deduction, she made some monthly payments of \$180 to the IRS on her outstanding tax liens. In 2002, her employer stopped processing this monthly allotment, and notified her that she must make the payment herself. She did not do so immediately.⁽¹⁴⁾ After reaching an agreement with the IRS, she now pays \$288 a month on her unpaid taxes through a garnishment of her wages.⁽¹⁵⁾ She currently owes the IRS approximately \$12,000 in back taxes; she has paid all her back state taxes.⁽¹⁶⁾

In 1997, Applicant filed for Chapter 7 bankruptcy and was discharged in bankruptcy the same year.⁽¹⁷⁾ She subsequently incurred additional unpaid debt in the amount of \$4,200.⁽¹⁸⁾ She owed Household Credit Services \$1,164, Cross Country Bank \$2,561, and Friedman Company \$471 for credit card debt.⁽¹⁹⁾ She made no effort to pay these long outstanding debts until recently. She has made arrangements with each creditor to make monthly payments of \$180, \$77, and \$60 respectively, until the debt is paid.⁽²⁰⁾ She has provided no documentation which reflects that these payments have been made.

POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2, Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to

grant or continue a security clearance for an applicant.⁽²¹⁾ The government has the burden of proving controverted facts.⁽²²⁾ The burden of proof is something less than a preponderance of the evidence.⁽²³⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

her.⁽²⁴⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁵⁾

No one has a right to a security clearance⁽²⁶⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁷⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁸⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁹⁾ 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.

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

Financial Considerations - Guideline F: 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.

Under Guideline F, a security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation 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.

Allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in not sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty and patriotism. Nothing in this Decision should be construed to suggest I have made this decision, in whole or in part, on any express or implied decisions as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline F. Based on Applicant's admissions in her responses to the SOR, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), FC DC E2.A6.1.2.2 (*Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filling deceptive loan statements, and other intentional financial breaches of trust*) and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply in this case. The Applicant intentionally decided not to pay her federal income taxes for eight years. Even after the IRS filed tax liens against her in 1996 for the unpaid taxes, she continued not to pay her yearly taxes. For many years, she made no effort to repay these overdue taxes. Applicant also incurred substantial credit debt after her 1997 bankruptcy discharge, which she made no effort to pay.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and concluded that none apply in this case. Applicant's debt problems are recent and on going, not an isolated incident. She made a conscious decision not to pay her federal and state taxes, despite her knowledge that she was required to pay income taxes on an annual basis. Even after the IRS filed two tax liens against her in 1996, thereby giving her notice of her tax indebtedness, Applicant

made no effort to resolve her tax issues. In fact, she continued to avoid paying her federal taxes. For awhile prior to and into 2002, Applicant did make payments on her back federal taxes, but when her employer stopped processing the payment through its payroll department, Applicant did not resume the payment, claiming the recent death of her mother and her diagnosis and treatment for breast cancer as the reason. While her mother's death in February 2001 and her 1996 cancer diagnosis are events beyond her control, neither of these events explain or justify why she did not pay or continue paying her long overdue federal income taxes in 2003 once her employer advised that she must make the payments herself. She clearly had the money to continue meeting her obligation as her net income increased by the exact amount being deducted from her pay when her employer stopped processing the deduction.

By discharging her previous debts in bankruptcy, Applicant had an opportunity to start anew. Instead, she incurred new debt which she did not pay. Applicant only recently agreed to pay this debt. She, however, has not provided evidence that she is in fact making these agreed upon payments. Furthermore, in light of her current monthly income and expenses, it is unlikely that Applicant will actually be able to honor her commitments to the creditors. Applicant has not sought or received credit counseling. I conclude that Applicant has not mitigated and overcome the government's case under Guideline F.

Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to Applicant.

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 (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a.: Against 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 national interest to grant a security clearance for Applicant. Clearance is denied.

Mary E. Henry

Administrative Judge

1. Item 6 (Security Application signed January 6, 1999) at 3.

2. *Id.* at 8.

3. *Id.* at 5.

4. *Id.*; Item 7(Statement dated October 15, 2003) at 3.

5. *Id.* The record does not reflect when she was diagnosed with diabetes.

6. *Id.*

7. *Id.* at 2-3.

8. Item 3, (response to SOR dated February 10, 2005) at 3.

9. *Id.*

10. *Id.* at 1, 2, 4; Item 7, *supra* note 4, at 4.

11. Item 3, *supra* note 9, at 1; Item 5 (Second Response to SOR dated March 1,2005) at 1.

12. *Id.*

13. *Id.*

14. Item 7, *supra* note 4, at 2.

15. Item 3, *supra* note 9, at 1, 5.

16. The SOR lists Applicant's taxes due the IRS as just over \$14,000. Since January 2005, she has paid approximately \$2000, leaving a balance due of approximately \$12,000.

17. Item 6, *supra* note 1, at 8.

18. Item 8 (credit Report dated October30, 2004) at 1-2.

19. *Id.*

20. Item 3, *supra* note 9, at 1, 4.

21. ISCR Case No. 96-0277 (July 11, 1997) at 2.

22. ISCR Case No. 97-0016 (App. Bd. December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

23. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

24. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

25. ISCR Case No. 93-1390 (App. Bd., Decision and Reversal Order January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

26. *Egan*, 484 U.S. at 531.

27. *Id.*

28. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

29. Executive Order No. 10865 § 7.