

DATE: June 7, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14833

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had financial difficulties for a number of years. Most of her past overdue debts arose during a period when she could not obtain employment. Since she has become employed, she has resolved all of her past due accounts, and she is now current with every creditor. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On July 17, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In a signed and sworn statement, dated August 1, 2003, Applicant responded in writing to the SOR allegations. She requested a clearance decision based on the written record, but she subsequently requested a decision based on a hearing record.

This case was initially assigned to another Administrative Judge, but on February 3, 2004, because of geographic consideration, the case was reassigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on February 14, 2004, and the hearing was held on March 17, 2004.

At the hearing, Department Counsel offered seven documentary exhibits (Government Exhibits 1 through 7), and no witnesses were called. Applicant offered eleven documentary exhibits (Applicant Exhibits A through K) and offered her own testimony. The transcript (TR) was received on March 31, 2004.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains three allegations, 1.a. through 1.c., under Guideline F. Applicant admitted SOR allegations 1.a and 1.c. The admitted allegations are incorporated herein as a finding of fact.

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

Applicant is a 31 year old employee of a defense contractor who seeks access to classified information. She is unmarried and she has two sons, ages fifteen and nine. She received a Bachelor of Science degree in Electrical Engineering in 2000.

(Guideline F - Financial Considerations)

The SOR lists two debts that Applicant owed as of June 19, 2003, 1.a. and 1.b. under Adjudicative Guideline F. The debts will be discussed in the order that they were listed in the SOR: 1.a. This debt, to Creditor 1 for a credit card, is listed in the SOR in the amount of \$3,793. The evidence at the hearing established that the correct amount owed was \$3,164. Applicant testified that she made payments of \$50 a month for eighteen months, and then she made a final payment of \$1,100 on December 12, 2003 (TR at 26-28). Exhibits J and K establish that, as of December 12, 2003, this debt was satisfied.

1.b. This debt, to Creditor 2 for a credit card, is in the amount of \$3,793. Applicant testified that she made a payment of \$1,000 on this debt. She contended that the creditor agreed upon this as full payment, and the debt was completely resolved as of December 17, 2001 (TR at 28-30). Exhibit C, a letter from the collection agency for Creditor 2, verifies this debt has been paid.

When Applicant was interviewed by Defense Security Service in December 2001, she had at least 10 debts that were overdue. She had already begun to make payments on some of these debts before her interview. Based on the evidence introduced at the hearing, I conclude that Applicant has now resolved all but one of her debts, a consolidated debt for her college loans, and that she is now current on that debt.

Applicant's financial problems began when she was a full time student and the sole provider of two young children. They continued after she graduated from college, when for the next two years, despite her best efforts, she was unemployed or underemployed. Applicant consulted a credit counseling service, but she determined that she could perform the services that it would provide herself. Once she was able to obtain full time employment, she began to contact each creditor and make restitution for each debt (TR at 40, 41).

Applicant now is living in a fiscally responsible manner. She only has one credit card, and she is current on all of her debts. She introduced two positive letters of reference indicating that she is a trustworthy, responsible and hard working individual. (Exhibit I)

POLICIES

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:

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. 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.

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.

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).

Based upon a consideration of the evidence as a whole, I find the following guideline and concern 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.

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 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. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he 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

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following:

With respect to Guideline F, the Government has established that Applicant has had a history of financial difficulties. However, she has made excellent progress and has now resolved all of her past due debts.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude that DC E2.A6.1.2.1. applies because of Applicant's history of not meeting her financial obligations. I find that Mitigating Condition (MC) E2.A6.1.3.3. applies because the cause of Applicant's financial difficulties were largely as a result of a situation beyond her control, her unemployment. MC E2.A6.1.3.6. is also applicable since Applicant has resolved all of her past due debts and is now current with every creditor. I, therefore, resolve Guideline F for Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1, Financial Considerations, Guideline F: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul

Administrative Judge