

DATE: March 25, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15603

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts she accrued following her son's hospitalization for treatment of a blood clot, which eventually required amputation of his leg. Applicant has since paid all of her accumulated debts, save for one major creditor, with whom she has a documented payment arrangement. Applicant by her demonstrated good-faith payment efforts mitigates security concerns associated with her delinquent debts, and she successfully refutes allegations of falsification of her security clearance application (SF-86). Clearance is granted.

STATEMENT OF THE CASE

On August 18, 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 granted, continued, denied or revoked.

Applicant responded to the SOR on September 16, 2003, and requested a hearing. The case was assigned to me on October 23, 2003, and was scheduled for hearing on December 15, 2003. A hearing was convened on December 15, 2003, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of seven exhibits. Applicant relied on one witness (herself) and 13 exhibits. The transcript (R.T.) was received on December 29, 2003.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant asked for leave to keep the record open to afford her the opportunity to supplement the record with an updated financial worksheet. There being no objection from the Government, and good cause being shown, Applicant was granted ten days to supplement the record. The Government was, in turn, afforded

three days to respond. Applicant timely provided an updated financial worksheet, to which the Government did not object. The post-hearing submission is accepted as Applicant's exhibit N.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have incurred numerous delinquent debts: She is alleged to have incurred 11 delinquent debts which exceed \$12,000.00 in total. Under Guideline E, Applicant is alleged to have falsified her security clearance application (SF-86) of October 23, 2001, by omitting her delinquent debts over 180 days delinquent when answering question 38a.

For her response to the SOR, Applicant admitted each of her debt-related allegations, but denied falsifying her SF-86. She claimed to have paid in full most of her listed debts and arranged terms to pay her largest creditor (creditor 1.h).

FINDINGS OF FACT

Applicant is a 52-year-old owner operator of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant and her husband (H) incurred significant medical bills after their son suffered a blood clot in his leg March 1999 that required hospitalization and eventual amputation after several extensive hospital stays. Applicant's medical bills covered by creditors 1.a through 1.f were all incurred in connection with medical problems experienced by herself, her husband, and her son. Since receiving the SOR, Applicant and H have managed to pay off all but two of her listed delinquent accounts, which she documents. Two of her accounts (creditors 1.h and 1.j) represent one consolidated account since creditor 1.h purchased the 1.j account. She documents entering into a payment arrangement with creditor 1.h in October 2003 that calls for monthly payments of \$500.00 (*see ex. F*). Applicant has made the first two payments and assures she is able and willing to continue her agreed on monthly payments to creditor 1.h until the obligation is satisfied (R.T., at 71-73). Based on her updated monthly financial statement she currently shows an increase in her monthly net remainder (*i.e.*, from the \$1,589.00 reported in her April 2002 financial statement to the current \$6,000.00 a month (*compare exs. 2 and N*). The difference in disposable monthly income is considerable: It should be enough to permit Applicant to comfortably meet her \$500.00 monthly obligations to creditor 1.h, even with the medical bills she currently faces with her son.

Asked to complete an SF-86 in November 2001, Applicant answered in the negative when answering question 38a (debts over 180 days). She assures she has limited reading skills with only a third grade education, didn't have a credit report at the time to check the status of her debts, and simply didn't read the question properly. Applicant impressed to be sincere about her debts and honest in her demeanor. Her claims of misreading question 38 are plausible ones under the circumstances and are accepted. No inferences of knowing and willful falsification are attributable to Applicant.

When interviewed by DSS and propounded interrogatories from DOHA, Applicant identified most of her outstanding debts. Whether her disclosures were the result of prompting by the interviewing DSS agent is unclear but not material anyway in view of the finding she did not knowingly and willfully falsify her SF-86 (*compare exs. 2, 3 and 7*).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Disqualifying Conditions

DC 1. A history of not meeting financial obligations.

DC 3. Inability or unwillingness to satisfy debts.

Mitigating Conditions

MC 1. The behavior was not recent.

MC 3. The conditions that resulted in the behavior were largely beyond the person's control (*e.g.*, loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation).

MC 6. The individual initiated good-faith efforts to repay overdue creditors or otherwise resolve debts.

Personal Conduct

The Concern: 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.

Disqualifying Conditions: None.

Mitigating conditions: None.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant and her husband accrued considerable delinquent debt in 1999 (most of it medical-related) as the result of her son's hospitalization in 1999 and eventual leg amputation. Without insurance to cover these medical bills, they could not pay them in a timely way. Altogether, Applicant and her husband accrued over \$12,000.00 in delinquent debts (11 in

all) that she has since paid or worked out a payment plan. On the strength of the evidence presented, the Government may invoke two Disqualifying Conditions (DC) of the Adjudicative Guidelines for financial considerations: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

Clearly, Applicant's debts can be traced to extenuating circumstances associated with her son's blood clot condition that required expensive hospitalization and surgical procedures. Mitigation is present, too, as demonstrated by her payment of most of her covered debts and evidenced payment arrangement with her remaining creditor: creditor 1.h. Applicant may take advantage of MC 3 (conditions largely beyond the person's control) of the Adjudicative Guidelines to extenuate her debt delinquencies. She may also avail herself of the mitigation benefits of MC 6 (initiated good-faith effort to repay overdue creditors) based on her repayment efforts.

Taking into account all of the circumstances of Applicant's accumulated debts and the good- faith efforts she demonstrated in satisfying her debts when she and her husband were able to, favorable conclusions warrant with respect to subparagraphs 1.a through 1.k as to the allegations governed by the Adjudicative Guidelines pertinent to Guideline F.

Posing potential security concerns, too, are Applicant's documented omissions of her covered delinquent debts from the SF-86 she completed in October 2001. Her omissions are, however, attributable to her mistaken reading of question 38a, caused in part by her very limited reading skills. Applicant's explanations of her omissions (misreading the question) were persuasive enough to avert inferences of knowing and wilful omission and enable her to refute the allegations of falsification of her SF-86 covered in subparagraph 2.a (governed by Guideline E).

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE F (FINANCIAL): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: FOR APPLICANT

Sub-para. 1.i: FOR APPLICANT

Sub-para. 1.j: FOR APPLICANT

Sub-para. 1.k: FOR APPLICANT

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley

Administrative Judge