

DATE: January 26, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-15679

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has two large outstanding debts, dating from before 2000, which she has made no effort to resolve. The Applicant also willfully failed to mention these two debts on an security clearance questionnaire. Insufficient mitigation is shown. Adverse inference is not overcome. Clearance is denied.

**STATEMENT OF THE CASE**

On June 4, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on June 18, 2003, and requested a hearing. The case was received by the undersigned on July 18, 2003, and a Notice of Hearing was issued on July 30, 2003.

A hearing was held on August 28, 2003, at which the Government presented five documentary exhibits. Testimony was taken from the Applicant, who also submitted three exhibits. The transcript was received on September 8, 2003.

**FINDINGS OF FACT**

The Applicant is 36, divorced and has a Master's Degree in Public Administration. She is employed by a defense contractor as Human Resources Manager, and she seeks to obtain a Secret-level DoD security clearance in connection with her employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the

Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline F - Financial considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she is financially overextended and is at risk of having to engage in illegal acts to generate funds.

Subparagraph 1.a. The Applicant admits that she was the co-signor of the note for an automobile. When the Applicant and her husband separated in 1995, the Applicant retained custody of the automobile, used it, and continued to make payments on the debt for two years. In 1997 the Applicant stopped making payments on this debt and the automobile was repossessed. The Applicant has owed approximately \$4,343 on this debt since April 1997. The Applicant maintains that her husband was the primary signer and should be responsible for any delinquency. (Transcript at 21-23, and Government Exhibit 4 at 2.)

The Applicant was informed that this account was delinquent in 2000, but she has made no effort to pay this creditor off. Now that she realizes that her continued employment requires her to pay this debt, she will attempt to do so by the end of the year. (Transcript at 28, 38.)

Subparagraph 1.b. The Applicant cannot admit or deny this debt for medical care in the amount of approximately \$1,990. This debt has been past due since July 2000. She assumes that this debt is hers and for some reason was not paid by her insurer. However, after finding out about this debt in 2000, the Applicant has made no efforts whatsoever to contact her insurance company or the collection agency to resolve the situation. (Transcript at 24-26, and Government Exhibit 4 at 1.)

Subparagraph 1.c. According to the Applicant, her financial situation is not as dire as it appears in the Personal Financial Statement (Government Exhibit 3 at 3.) According to that document, prepared in April 2003, she runs a deficit of approximately \$1,549 a month. However, three quarterly sources of funds are not included in her income. The Applicant receives a tuition reimbursement of \$4,747.50 per academic quarter, from her employer (Applicant's Exhibit A). In addition, she receives payments of \$2,150 and \$1,620 per quarter from two universities where she is an adjunct faculty member (Applicant's Exhibits B and C.) The end result is that the Applicant runs a surplus of approximately \$550 monthly. (Transcript at 39-42.)

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she intentionally falsified material aspects of his personal background during the clearance screening process.

On April 22, 2003, the Applicant completed an official DoD questionnaire (Government Exhibit 1). The Applicant states that this questionnaire was actually prepared by her in the 2000-2001 time frame. Government Exhibit 5 is an unsigned copy of a questionnaire which is identical to Government Exhibit 1. Government Exhibit 5 states on page 1, "DATE SUBJECT SIGNED THE FORM: 2001/08/08." In April 2003 her company security officer came to the Applicant and asked her to sign a copy of the same the questionnaire. The Applicant states that she signed the document without reviewing it. (Transcript at 42-44.)

The questionnaire asks the Applicant whether, in the last seven years, she had a tax lien placed against her property for failing to pay taxes or other debts. The Applicant answered, "no." (Government Exhibit 1 at Question 36.) In fact a state tax lien had been paid by the Applicant in 1997.<sup>(1)</sup> The Applicant testified that she knew about the tax lien in 2001, that it dated from 1992, but she did not put it down on the form because the lien actually belonged to her ex-husband, even though she paid it. (Transcript at 28-32.) Documents from the state show that the lien was filed in the name of the Applicant and her husband. (Government Exhibit 3 at 7-8.)

The Applicant was also asked on the questionnaire whether she was currently 90 days past due on any debts and whether she had been 180 days past due on any debts within the past seven years. The Applicant answered "no" to both questions. (Government Exhibit 1 at Questions 38 and 39.) These were false answers to relevant questions about the Applicant's debt situation. As set forth above, the Applicant had knowledge that these two debts were past due in 2000.

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Guideline F (Financial considerations)

#### Conditions that could raise a security concern:

- (1) a history of not meeting financial obligations;
- (3) inability or unwillingness to satisfy debts;

#### Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

### Guideline E (Personal conduct)

#### Conditions that could raise a security concern:

- (2) the deliberate omission, concealment, or falsification 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;

#### Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of falsification and financial irresponsibility that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

### **CONCLUSIONS**

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has two long time past due debts (Guideline F); and that she intentionally made false material statements to DoD (Guideline E).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against her.

Turning first to her delinquent debts. I have considered, and rejected, the Applicant's arguments concerning whether she owes these two past-due debts. She had custody of the automobile, and made payments on it, before it was repossessed. It was her responsibility to contact her insurance company to resolve payment issues concerning the medical debt. By her own evidence, the Applicant does not run a financial deficit every month, rather she has the money to resolve these debts if she had wanted to. Her continuing failure to take any measures to resolve these debts leaves me with no alternative but to find against her regarding Guideline F.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about material aspects of his or her personal background. Whether the questionnaire the Applicant signed was prepared by her in 2000, 2001 or 2003, she knew she had two substantial debts that fit the questions' parameters. In addition, she knew of the existence of a tax lien which was filed in her name and her husband's. She has not sufficiently explained her failure to include them in the questionnaire. Guideline E is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: Against the Applicant.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: For the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: For the Applicant.

Subparagraph 2.b.: Against the Applicant.

Subparagraph 3.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 the Applicant.

Wilford H. Ross

Administrative Judge

1. The Government alleges that the tax lien was actually filed in 1999. However, based on the information provided by the Applicant, the lien could have been filed no later than 1997. (Government Exhibit 3 at 7-8.)