

DATE: July 9, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16293

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Department Counsel

Nygina Mills, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a history of financial difficulties, including a bankruptcy. A significant amount of Appellant's past financial difficulties were the result of a loan, which she cosigned and which was not paid, unbeknown to her and through no fault of her own. All of her past overdue debts have now been resolved through bankruptcy. Appellant has consulted with financial advisors and has a more stable and mature outlook about her finances. Applicant's failure to give correct and complete information to the Government was due to confusion and misinformation, not an attempt to mislead the Government. Clearance is granted.

STATEMENT OF THE CASE

On October 7, 2002, 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 November 4, 2002, Applicant responded in writing to the SOR allegations. She requested a clearance decision based on a hearing record.

On February 3, 2003, this case was assigned to another Administrative Judge, but on February 10, 2003, because of caseload consideration, the case was reassigned to me to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on February 11, 2003, and the hearing was held on February 27, 2003.

At the hearing, Department Counsel offered six documentary exhibits (Government Exhibits 1 through 6), and no witnesses were called. Applicant offered four documentary exhibits (Applicant Exhibits A through D) and offered her

own testimony. The transcript (TR) was received on March 11, 2003.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline E (Personal Conduct) and Guideline F (Financial Considerations) of the Directive. The SOR contains four allegations, 1.a. through 1.d., under Guideline E, and one allegation, 2.a., under Guideline F.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant is a 33 year old employee of a defense contractor who seeks access to classified information. She has worked in positions involving security for more than 14 years.

The SOR lists eight debts that Applicant owed as of June 16, 2000, 1.a. (1) to 1.a.(8). It also lists two additional debts that Applicant has been making payments on through a debt counselor. In her response to the SOR, Applicant admits to owing these debts. The total owed by Applicant was approximately \$3,165. These debts were all long overdue, most for several years. Yet when Applicant completed a signed, sworn Security Clearance Application (SCA) on June 16, 2000, she answered "no" to questions #38 and #39. Question #38 asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?", and Question #39 asks, "Are you currently over 90 days delinquent on any debt (s)?" While Applicant is not currently past due on any debts, the evidence

is clear that at the time she completed the SCA, Applicant was delinquent on the above stated debts, and she should have answered "yes" to both of these questions.

Applicant testified credibly that when she completed the SCA, she believed that, since she had retained the services of two credit counseling services in an attempt to resolve her financial problems, and through these companies she was making payments to the creditors, these debts should not be considered past due in a manner which would cause them to be listed on a credit report or the SCA. She also did not recall some of her debts. (TR at 38-39.)

Applicant testified that she had planned to pay off her debts through the use of these credit counseling services. However, she had incurred one debt by cosigning a loan on a mortgage for the man who was her son's father. When this loan became past due in the amount of approximately \$116,000, because unbeknown to Applicant, this man had failed to make payment on the home, she was advised by an attorney that she should file for bankruptcy. After she received the paperwork from her attorney, which established that she had filed for bankruptcy, she contacted a special agent from the Defense Security Service (DSS) to inform the agent that she had filed the bankruptcy.

Applicant's bankruptcy was finalized, and her debts were discharged on July 29, 2002.(Government Exhibit 4.) She is currently not overdue on any of her financial obligations.

Applicant introduced five positive letters of reference on her behalf. (Applicant Exhibit D.) Her supervisor testified at the hearing in a supportive manner for Applicant. (TR at 74-76.)

POLICIES

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 adjudicative guidelines most pertinent to an evaluation of the facts of this case:

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. Conditions 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. Conditions that could mitigate security concerns include:

E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily.

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. Conditions that could mitigate security concerns include:

E2.A6.1.3.1. The behavior was not recent.

E2.A6.1.3.3. 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).

E2.A6.1.3.4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

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 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

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines E and F:

With respect to Guideline E, the evidence establishes that Applicant provided inaccurate information to the Government in response to two questions #38 and #39 on the SCA that she executed in June 2000. However, I conclude that Applicant's did not knowingly provide untruthful information. Applicant, for several years prior to the completion of her SCA had been attempting to resolve her debts through the use of two credit counseling services. While Applicant was not correct in her assumption that her actions kept these past due debts from coming within the purview of questions #38 and #39 on the SCA, I conclude that Applicant did have a good faith belief that when she answered the SCA, the correct answers to questions #38 and #39 were "no."

Additionally, under Guideline E, Applicant's conduct, regarding the information that she provided to DSS, was correct at the time that she provided it. Applicant did not initially know that she was going to file for bankruptcy, but when she did, at the advice of her attorney, she informed the DSS special agent in a timely manner. I resolve Guideline E for Applicant.

In reviewing the Disqualifying Conditions (DC) under Guideline E, I conclude that no DC applies because the false information that Applicant provided in her SCA was not knowingly made

to mislead the Government. Additionally, the information that she provided to the DSS special agent was not incorrect at the time it was provided . No itigating Conditions (MC) apply.

With respect to Guideline F, the Government has established that Applicant has had a history of financial difficulties, including a bankruptcy. However, all of her past overdue debts have been resolved through bankruptcy, and she is now current on all of her debts. I, therefore, resolve Guideline F for Applicant.

Regarding Disqualifying Condition, I conclude both DC E2.A6.1.2.1., and DC E2.A6.1.2.3 apply, because of Applicant's history of not meeting financial obligations and her inability to satisfy her debts. However, I find MC E2.A6.1.3.3 applies because a significant amount of Appellant's past financial difficulties occurred because the individual, for whom she cosigned a loan, failed to make the required payments. This was largely beyond Applicant's control. Additionally, MC E2.A6.1.3.4 applies because Applicant has consulted with financial advisors and has a more stable and mature outlook about her finances, and she is now current on all of her debts.

FORMAL FINDINGS

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

Paragraph 1, Personal Conduct, Guideline E: For the Applicant

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2, Financial Considerations, Guideline F: For the Applicant

Subparagraph 2.a.: For the 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