

DATE: December 14, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17286

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has mitigated financial concerns that to some degree were attributable to conditions beyond her control, including a wrongful termination of her employment. She has resolved all of her delinquent indebtedness addressed by the SOR through a discharge in bankruptcy. Moreover, Applicant is now meeting her financial obligations by living within her means. Her income is more than adequate to meet her payments for her home, truck, and other living expenses. Applicant has established a savings account for additional financial security. Based on her commitment to monthly payments, Applicant's outstanding federal tax liability of \$600.00 appears well within her ability to pay off before the end of the year. Clearance is granted.

STATEMENT OF THE CASE

On October 15, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that her case be submitted to an Administrative Judge.

On November 13, 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on April 7, 2004. A notice of hearing was issued on April 7, 2004 and the hearing was held on April 27, 2004. During the hearing, five Government exhibits (Govt Ex), three Applicant exhibits (Ap Ex), and the testimony of Applicant were received. Without objection by Department Counsel, I granted Applicant until May 18, 2004 to provide additional documentation. Department Counsel does not object to the documentation that Applicant submitted on May 18, 2004 (Ap Ex D). The transcript (Tr) was received on May 18, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 58-year-old security officer employed by a defense contractor. She is seeking a security clearance.

In 1997, Applicant leased an automobile through the manufacturer's finance company. When she could no longer afford the payments, Applicant agreed to a voluntary repossession of the vehicle. Applicant's remaining debt under her lease agreement, which she did not pay, was \$8,284.00 (SOR ¶ 1.a).

In 1997, Applicant incurred a debt with a retail business. She became delinquent on the debt and it was assigned to a debt collector. Applicant incurred a total debt of \$1,102.00 on the account that she did not pay (SOR ¶ 1.c).

In 1999, Applicant opened a credit card account with a bank. She incurred a total debt of \$2,190.00 on the account that she did not pay (SOR ¶ 1.d).

In 2000, Applicant opened a credit card account. She incurred a total debt of \$4,178.00 on the account that she did not pay (SOR ¶ 1.b).

In 2001, Applicant incurred a \$214.00 debt for a satellite television system. She did not pay the debt (SOR ¶ 1.g).

In 2002, Applicant incurred debts of \$58.00 and \$53.00 for utility services. She did not pay the debts (SOR ¶ 1.h).

Applicant incurred a \$389.00 debt with a loan company that she did not pay (SOR ¶ 1.e). She incurred a \$263.00 debt on an account with a department store that she did not pay (SOR ¶ 1.f).

Applicant incurred an unpaid federal tax liability for tax year 2001 of approximately \$1,500.00. The liability resulted from her failure to make estimated payments for a small business she operated.

On March 28, 2002, Applicant submitted a sworn statement to a Defense Security Service (DSS) agent. Applicant stated her financial problems began when her father passed away in 1998 and she had to care for her mother.

In January 2002, Applicant's sister began caring their mother. Their mother passed away in July 2002.

On June 27, 2002, Applicant's current employer terminated her employment. She filed a grievance and obtained a lower paying job as a cashier at a gas station. On April 21, 2003, Applicant's current employer agreed to: reinstate her on April 28, 2003; convert her termination to a layoff; and pay her \$2,334.08 less applicable deductions.

On August 1, 2003, Applicant filed a petition for bankruptcy pursuant to chapter 7 of the bankruptcy code. She listed total assets of \$32,675.00 and total liabilities of \$45,274.17 (SOR ¶ 1.i). On November 28, 2003, Applicant was discharged from all of the debts addressed by the SOR.

Applicant's tax refund for tax year 2003 reduced her federal tax liability to approximately \$700.00. On May 1, 2004, she began making monthly payments of \$100.00 to pay off the debt.

Applicant's current monthly take home pay is approximately \$1,600.00. She pays \$266.00 per month for her mobile home and makes a monthly truck payment of \$378.00. Applicant has no credit cards and uses a debit card.

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the

person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guideline is applicable to this case.

Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include 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) (Mitigating Condition 3). They also include E2.A6.1.3.6, the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

CONCLUSIONS

The record evidences both Disqualifying Condition 1 and Disqualifying condition 3. Applicant has both a history of not meeting her financial obligations as well as an inability or unwillingness to pay her debts.

The record reflects the applicability of Mitigating Condition 3 because Applicant's financial problems to some degree resulted from conditions that were beyond her control. After her father passed away in 1998, Applicant incurred the responsibility for caring for her mother. In addition, her employment was wrongfully terminated in June 2002 and she had to take a lower paying job until her reinstatement 10 months later.

In addition, Applicant has resolved all of her delinquent indebtedness addressed by the SOR through a discharge in bankruptcy. This supports Mitigating Condition 6. Moreover, Applicant is now meeting her financial obligations by living within her means. Her income is more than adequate to meet her payments for her home, truck, and other living expenses. Applicant has established a savings account for additional financial security. She no longer has credit cards but relies on a debit card to ensure that she no longer becomes delinquent on any indebtedness. Based on her commitment to monthly payments, Applicant's outstanding federal tax liability of \$600.00 appears well within her ability to pay off before the end of the year.

The record establishes that Applicant has mitigated the financial concerns in this case. Therefore, I find in favor of Applicant.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

DECISION

In light of the evidence of record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.