

DATE: March 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17635

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn MacKinnon, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant, the primary custodial parent of a six-year-old daughter, stopped payment on two credit card accounts after she and the father of her daughter terminated their relationship. With her employ by a defense firm in March 2002, Applicant now earns sufficient income to commence repayment of the two delinquent credit card accounts, on which there is an aggregate balance of approximately \$7,251.74. Unable to take advantage of lump sum settlement offers extended by the creditors, Applicant forwarded partial payments in early January 2003, along with a credible promise to continue these payments each month until the debts are satisfied. Clearance is granted.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated August 22, 2002, 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on financial considerations (guideline F) due to unresolved indebtedness to two creditors totaling \$6,903.32.

On September 11, 2002, Applicant, acting *pro se*, responded to the allegations set forth in the SOR, admitting the outstanding debts. Her answer was not considered complete because she failed to indicate whether she wished to have a hearing. On October 18, 2002, Applicant filed an addendum to her original response, in which she requested a hearing before a DOHA Administrative Judge. The case was assigned to me on December 19, 2002. With the agreement of the parties, pursuant to formal notice dated January 6, 2003, the hearing was scheduled for January 10, 2003. At the hearing, which was held as scheduled, the Government submitted three documentary exhibits, which were entered without any objections. Applicant's case consisted of three exhibits and her testimony. Two additional documents were identified for

the record with their admission contingent on submission of copies following the hearing. A transcript of the hearing was received in this office on January 22, 2003.

On March 10, 2003, Applicant's counsel forwarded copies of records related to the debts alleged in the SOR. ⁽¹⁾ The documents were marked and entered as Applicant exhibits D and E.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 27-year-old claims adjuster in the workmen's compensation department of a defense contractor (company A). Employed by the defense firm since March 2002, she is seeking a security clearance at the request of her employer, although her present duties do not require access. ⁽²⁾

From January 1994 to January 1998, Applicant worked as a transportation dispatcher for a local casino. In December 1996, she and her boyfriend, also a casino employee, had a daughter. Temporarily out of work due to the birth of her daughter, ⁽³⁾ Applicant fell behind on her credit card obligations, including a credit card account (debt #1, SOR subparagraph 1.a.) opened in February 1996, on which she had incurred \$2,500.00 in charges, and a revolving charge account (debt #2, SOR subparagraph 1.b.) opened in June 1994 with a nationwide retailer. Her boyfriend paid most of their living expenses.

During calendar year 1998, Applicant worked as an office manager. In about January 1999, Applicant began employment as a paralegal for a local law firm. Sometime in the next year, she arranged to make monthly payments through a credit service on debts #1 and #2. This resulted in lower monthly payments on the two accounts for a few months. About six months after she entered into this repayment arrangement, Applicant and her boyfriend separated. As the primary custodial parent for their daughter, Applicant sought legal advice regarding visitation rights and child support. Applicant and the father of her daughter jointly agreed he would pay \$85.00 per week in child support, a figure based on consideration of their respective incomes.

Even with the \$340.00 per month in child support, Applicant found it difficult to meet her financial obligations on her salary as a paralegal. She stopped making payments on debts #1 and #2, choosing instead to pay her living expenses, including her car loan payments of \$366.00 per month. In October 2001, Applicant commenced employment as a paralegal with another law firm. ⁽⁴⁾

Circa late 2001, a collection agency for debt #1 demanded payment of the outstanding balance, which was about double the original amount. Applicant called the collection agent, and requested whether she could set up a partial payment agreement. Unable to pay the \$5,000.00 in a lump sum again demanded by the creditor, Applicant was advised by an attorney friend to wait until she was sued. In the event of a judgment award, the judge would likely order the creditor to accept reasonable monthly payments, based on her ability to pay.

In March 2002, Applicant went to work as a claims adjuster for her current employer, at an annual salary of \$38,000.00. In conjunction with this position, Applicant executed a security clearance application (SF 86) on March 25, 2002. In response to question 43, general remarks, Applicant disclosed she was currently 180 days late on credit cards and indicated she owed \$1,886.00 on debt #2.

On March 28, 2002, the Defense Security Service (DSS) ran a credit check which disclosed a second bad debt, debt #1 on which she owed \$5,062.00, and two retail credit card accounts rated sixty days late. Most of her financial obligations were rated "pays as agreed."

On May 7, 2002, Applicant was interviewed by a DSS special agent about her delinquent credit card obligations. Applicant detailed her efforts to pay debts #1 and #2 through a third party prior to her separation from the father of her daughter. She related an inability to pay in a lump sum debt #1, and expressed her intent to follow legal advice and wait to make any payment on that debt until collection was pursued in court. As for debt #2, Applicant indicated she was willing to set up a partial payment agreement with the creditor and would attempt to contact the retailer's credit

department. Applicant related she had brought current the two retail accounts which had been listed as sixty days late on her recent credit report.

Around the time of her DSS interview, Applicant was asked for half of the balance of debt #2 in a lump sum. Not certain what to do and unable to afford the payment, Applicant did nothing.

In July 2002, Applicant's work performance was reviewed because of her status as a new employee. Applicant's supervisors were very pleased with the quality of her work, and her annual salary was increased by \$2,000.00 to \$40,000.00.

On receipt of the Statement of Reasons, Applicant notified her program manager of her financial delinquencies and expressed to him her intent to satisfy her debts. She also sought legal counsel, and was advised to make payments on her two delinquent debts. Applicant wrote to the original collection agents who had contacted her in the past. In late September 2002, Applicant was offered a settlement by the new collection agent for debt #2. The sum of \$1,329.26 would be accepted in settlement of the \$1,926.47 outstanding balance if received by October 21, 2002. Applicant was notified that if she did not take advantage of the offer, normal collection efforts would proceed. By letter of October 8, 2002, Applicant was extended a settlement offer by the attorney representing the assignee of the original creditor for debt #1. With a lump sum payment of \$2,737.08 by November 5, 2002, the debt balance of \$5,475.27 would be considered settled in full. Applicant was notified that if she could not make the entire payment by the above debt, the attorney would be happy to make reasonable payment arrangements on the full balance. By letters dated December 31, 2002 (mailed on January 3, 2003), Applicant forwarded to the respective collection agents \$100.00 on debt #1 and \$50.00 on debt #2, along with a promise to continue these monthly payments until full satisfaction.

As of January 2003, Applicant was current in her other financial obligations. She had not received any confirmation as to whether the collection agents would accept her planned repayment of debt #1 at \$100.00 per month and debt #2 at \$50.00 per month. After payment of living expenses and credit obligations, including the \$150.00 toward her two delinquent accounts, Applicant has an estimated \$729.83 in discretionary funds available each month.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

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.A6.1.3.3. 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.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to guideline F:

Applicant fell behind in her financial obligations following the birth of her daughter in December 1996. Although the father of her daughter was paying many of their expenses, Applicant could not keep up with two credit card accounts. Seeking to reduce her monthly payments, Applicant arranged for a credit service to make payments on her behalf on debts #1 and #2. Approximately six months later, she and the father of her daughter separated. Even with \$340.00 in child support each month, Applicant was unable to make the arranged payments on these two debts. With interest and other charges, the balances on her two delinquent credit cards eventually doubled and the accounts were placed for collection. As of October 2002, the outstanding balance of the two debts totaled in the aggregate about \$7,401.74. Disqualifying conditions E2.A6.1.2.1., a history of not meeting financial obligations, and E2.A6.1.2.3., inability or unwillingness to satisfy debts, under financial considerations (guideline F) must be taken into account in assessing whether Applicant can be counted on to adhere to her security responsibilities.

Security significant financial considerations are potentially mitigated under the Directive if the behavior was not recent (E2.A6.1.3.1.), it was an isolated incident (E2.A6.1.3.2.), the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.), 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 (E2.A6.1.3.4.), or the individual initiated a good-faith effort to repay creditors or otherwise resolve debts (E2.A6.1.3.6.). With lack of personal income and a relationship separation being the cause of Applicant's financial difficulties, there is a basis to favorably apply

E2.A6.1.3.3. in this case. At the time Applicant incurred the credit card charges, she expected she would be able to make the monthly payments. Applicant could not have foreseen that she and the father of her daughter would separate, and her decision to provide for her daughter rather than pay her old debt was reasonable in the circumstances.

Having benefitted from the extension of credit, Applicant remains legally responsible for debts #1 and #2, however. Satisfaction in full of outstanding delinquencies is not required before one can be granted access, but there must be adequate assurances that the debts will be resolved and the financial difficulties are not likely to persist. Since her hire by the defense contractor in March 2002 at an annual salary of \$38,000.00, Applicant has been in a position to address her financial delinquencies. At that time sixty days late on two retail credit card accounts on which she had balances owed of \$327.00 and \$674.00, Applicant made payments on those two accounts in early May 2002 to bring them both current. She made no payments on debts #1 or #2, which were rated as bad debts. Having offered to make partial payments on debt #1, she could not afford the lump sum payment of the \$5,000.00 demanded by the collection agent. On the advice of an attorney/friend, she elected to wait for court action, where the judge would likely establish a reasonable repayment plan. The collection agency for debt #2 wanted half of its \$1,800.00 plus balance in a lump sum, which she also could not pay.

On receipt of the SOR, Applicant notified her program manager of her indebtedness and she sought legal counsel. Advised by her attorney that she should make payments on her delinquent accounts, Applicant wrote to the collection agents who had contacted her in the past. In late September/early October 2002, Applicant was extended settlement offers by the agents currently handling collection action for the accounts. The collection agent for debt #1 expressed a willingness to make payment arrangements with Applicant, should she be unable to make the balance by the due date of November 2, 2002. (S) Unable to pay the full amounts requested in settlement of either account, Applicant made partial payments of \$100.00 on debt #1 and \$50.00 on debt #2 by personal checks mailed in early January 2003. Although these payments are very recent, Applicant presented as sincere in her intent to resolve her indebtedness. Applicant's record of timely payment of her living expenses and the absence of any new delinquencies reflect an ability to live within her means. While the debts alleged in SOR subparagraphs 1.a. and 1.b. are yet to be satisfied, I am persuaded Applicant will continue to address them in a responsible manner, now that she has the financial means to do so and is aware of the security risk presented by unresolved indebtedness.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the 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 a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. The documents were forwarded on my inquiry dated March 10, 2003.
2. The director of the workmen compensation department at company A testified that on DOHA's issuance of an SOR to Applicant, he contacted company A's chief of security. As a result of his discussions with corporate security, it was decided Applicant did not need a clearance for her current responsibilities, and Applicant's present job would not be any different if she had a clearance. (Transcript pp. 24-25). However, he also testified that the company pursues clearance for every employee, and security did not withdraw its request for a clearance for Applicant. (Transcript p. 28).

3. Applicant told a Defense Security Service special agent in May 2002 that she fell behind on her payments to debt #1 because she was out of work due to the birth of her daughter. (Ex. 2). Her SF 86 does not reflect any periods of unemployment. (*See* Ex. 1). Assuming Applicant was out of work for a brief period due to the pregnancy, she was allowed to return to her job as a transportation dispatcher at the casino.

4. It is not clear whether Applicant realized a significant increase in salary with the change of employers.

5. Applicant testified both collection agents contacted her by letter and telephone regarding establishing a repayment plan and reduced by half the debt. (Transcript pp. 68-69). The settlement offer from the collection agent for debt #2 indicates that if Applicant did not take advantage of the offer (payment of \$1,329.26 by October 21, 2002) the agency would proceed with normal collection efforts.