

DATE: June 19, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19593

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's indebtedness to 17 creditors totaling approximately \$78,411.00, is not mitigated simply by Applicant's Chapter 7 discharge in April 2003. Missing is evidence of (1) a sustained track record of financial responsibility, and (2) healthy financial habits that demonstrate the past financial problems will not return in the future. Applicant's intentional falsifications of her security form in May 2000 and her sworn statement August 2001 represent disqualifying behavior under personal and criminal conduct. Clearance is denied.

STATEMENT OF CASE

On January 14, 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, amended by Change 4, April 20, 1999, 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. Applicant filed her Answer to the SOR on February 03, 2003. Applicant elected to have her case decided on a written record. The Government provided a copy of the File of Relevant Material (FORM) on April 3, 2003. Applicant received the FORM on April 11, 2003. Her response to the FORM was received on May 3, 2003. The case was assigned to the undersigned for decision on May 8, 2003.

FINDINGS OF FACT

Applicant admitted all factual allegations pertaining to financial matters under Guideline F, except for subparagraphs 1.k. and 1.o. She also denied the personal conduct allegations of Guideline E. She furnished no response to the criminal conduct allegation of Guideline J.

After a complete review of the entire record, I make the following factual findings: Applicant is 45 years old and employed as a security assistant for a defense contractor. She seeks a secret security clearance.

Financial Considerations (paragraph 1 of the SOR): A credit bureau report (CBR) dated June 20, 2001, reflects Applicant was delinquent to 17 creditors in an amount totaling \$78,411.34. (Item 11) Creditors include credit card issuers, a mortgage lender, utilities, and collection agencies representing creditors. The mortgage lender foreclosed on Applicant's house in October 1998.

Until she filed Chapter 7 bankruptcy in October 2002, Applicant had taken no action to resolve any of the debts after advising the government in her May 2000 security form she had several debts. (Item 5) In February 2001, Applicant claimed but provided no proof she paid off seven of the listed debts, and planned to contact and arrange payment plans with the other creditors or collection agencies. (Item 9)-(1) In August 2001, Applicant again claimed but provided no proof she resolved seven of the listed debts, and planned to pay the other creditors. (Item 8) Had all the debts become delinquent in the last two years, then Applicant's claim of low sale commissions by her husband over the last few months, would be credible. However, with six listed delinquencies over four years old, (2) I find Applicant has not been candid about the actual reasons for falling \$78,411.00 in debt.

In April 2002, Applicant indicated she was going to file Chapter 7 bankruptcy (Item 10); in October 2002, she filed the petition, and was discharged from all obligations except for two insufficient funds checks. She satisfied those checks on April 22, 2003, for \$127.80. (Response to FORM)

In her answer to the SOR, Applicant denied subparagraph 1.k. and 1.o. I find against Applicant under 1.k. Applicant provided no evidence to support her belief she was covered by insurance. I also find against her under 1.o. because she is listed on the CBR as being responsible for the mortgage, and because she referred to the house as her house. (Item 8) As the house owner, she was the appropriate party to be cited for not hauling away trash.

Personal Conduct (paragraph 2), Criminal Conduct (paragraph 3): On May 22, 2000, Applicant correctly answered "yes" to question 38-(3) of her security form. (item 5), but intentionally falsified the number of creditors she was over 180 days delinquent to. The CBR reflects at least five additional debts over 180 days. In response to question 39-(4) of the same security form, Applicant correctly answered "yes" but then revealed only two debts over 90 days delinquent. Based on her explanation that "...once I listed my debts that were 180 days past due, that it would cover my debts that were over 90 days past due...", I find for Applicant under SOR subparagraph 2.b. but against Applicant under 2.a. because she did not list all her debts over 180 days delinquent.

In February 2001, Applicant intentionally falsified her sworn statement. (Item 9) She falsely indicated she paid seven of the listed creditors and planned to make arrangements to repay the other creditors. (5) On August 31, 2001 (subparagraph 2.c.), Applicant again intentionally falsified information in her sworn statement. She falsely indicated she paid seven of the listed accounts when she knew each of the seven debts were still unpaid. (item 8)-(6)

POLICIES

Enclosure 2 of the Directive sets forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

Financial Considerations (Guideline F)

Disqualifying Conditions:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts.

Mitigating Conditions:

1. The behavior was not recent;
2. It was an isolated event;
3. The conditions that resulted in the behavior were largely beyond the person's control;
4. The person has received counseling for the problem and there are clear indications that the problem is being resolved or is under control.
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Personal Conduct (Guideline E)

Disqualifying Conditions:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire...to determine security clearance eligibility....;
3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator...in connection with a personnel security or trustworthiness determination.

Mitigating Conditions:

1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided the correct information voluntarily;
3. The individual made prompt good-faith efforts to correct the falsification before being confronted with the facts.

Criminal Conduct (Guideline J)

Disqualifying Conditions:

1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.

Mitigating Conditions:

1. The criminal behavior was not recent;
2. The crime was an isolated incident;
6. There is clear evidence of successful rehabilitation.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable. The decision must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an Applicant may fail to properly safeguard classified information 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.

The Government must establish all the factual allegations under financial considerations (Guideline F), personal conduct (Guideline E), and criminal conduct (Guideline J) which establishes doubt about a person's judgment, reliability and trustworthiness. Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

The Government has established its case under Guideline F. Applicant's four year history of indebtedness to 17 creditors falls within the first disqualifying condition (DC 1) of guideline F as reflecting a history of not meeting financial obligations. Since one of the listed debts Applicant had to repay resulted from writing two non-sufficient fund checks, her overall indebtedness is also attributed to deceptive financial practices, i.e., check fraud, within the purview of DC 2.

The age and size of some of the delinquent debts clearly shows an inability to resolve all of them swiftly. However, the record also reflects an unwillingness by Applicant to pay her just obligations. (DC 3) In February 2001, Applicant's PFS shows she had \$796.00 left over every month for debt reduction. That amount could have satisfied several of the smaller debts of the SOR. In August 2001, Applicant had \$896.00 available to address some of the smaller debts. Yet, the record contains no evidence of an attempt to satisfy the debts or communicate with any of the creditors in any way. The lack of action toward paying any one of the debts when she had the financial means between May 2000 and October 2002, constitutes persuasive evidence under DC 3.

The passage of more than two years (May 2000 to October 2002) without action by Applicant in resolving any of the debts, coupled with the fact that one of the debts became delinquent less than 18 months ago, makes MC 1 (the behavior was not recent) inapplicable. Compiling 17 debts over a four year period represents a pattern of financially irresponsible conduct that renders MC 2 (the conduct was isolated) inapplicable.

Though Applicant cited her husband's lack of commissions as being the primary reason for the indebtedness, his financial difficulties cannot be viewed in the same category as a person who is suddenly laid off or terminated, and finds himself without any income. There are probably other reasons why Applicant has fallen so deeply in debt, but she has failed to identify them. Hence, she has failed to meet her ultimate burden of persuasion under MC 3 of the financial considerations guideline.

MC 4 of the financial guideline, which refers to counseling, is inapplicable to the facts here as there is no evidence of counseling. MC 6 refers to a good-faith effort to repay overdue creditors or otherwise resolve debts. In October 2002, Applicant chose to resolve her debts by liquidating them in a Chapter 7 bankruptcy. Even though Applicant was discharged from all delinquent debts (except the non-sufficient fund checks), she has got to regain her credit worthiness. Given the history of documented financial difficulty culminating in 17 delinquent debts in June 2001, a sustained track period of financial responsibility must be generated before an affirmative finding can be made that she has favorably changed her financial habits and warrants access to classified information.

Applicant's intentional falsifications of her May 2000 security form and August 2001 sworn statement establishes poor judgment and dishonest behavior within the personal conduct guideline. The security form falsification makes DC 2 applicable. The sworn statement falsification makes DC 3 applicable. Significantly, Applicant has aggravated her disqualifying personal conduct by repeating her false claim in her response to the FORM of having paid seven of the

creditors.

All mitigating conditions under the personal conduct guideline have been considered but none apply because of Applicant's intentional falsification of her security form in May 2000, and her repeated falsifications about the debts she paid.

Applicant's personal conduct also constitutes felonious criminal conduct under Title 18 U.S.C. 1001, which is defined as an intentional falsification of a material fact before a government agency. Applicant's intentional falsification of debts on her security form in May 2000 and her sworn statement dated August 2001, satisfies the elements of 18 U.S.C. 1001, and falls within the scope of Guideline E. (DC 1 - allegations or admission of criminal conduct, regardless of whether the person was formally charged). The debt information she sought to conceal was material to the government's right to know about a person's financial status during a security clearance investigation.

There is insufficient evidence in mitigation to find for Applicant under the criminal conduct guideline. MC 1 is not applicable as the sworn statement falsification occurred in August 2001, less than two years ago. Moreover, Applicant continues to falsely assert she paid some of the listed debts. Clear evidence of rehabilitation under MC 3 begins with an understanding of the full scope of one's dishonest conduct. In view of Applicant's intentional falsifications of her financial situation over the last three years, as well as the absence of any significant evidence in mitigation or explanation, Applicant has not met her ultimate burden of persuasion under the criminal conduct guideline.

Applicant's discharge in bankruptcy without evidence in mitigation and rehabilitation is not enough to find for her under the financial considerations guideline. Her intentional falsifications also represent adverse personal conduct and criminal conduct. In reaching my findings under the three guidelines, I have also considered the general factors of the whole person concept of the Directive.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (financial considerations): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.

- n. Against the Applicant.
- o. Against the Applicant.
- p. Against the Applicant.
- q. Against the Applicant.

Paragraph 2 (personal conduct): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. For the Applicant.
- c. Against the Applicant.

Paragraph 3 (criminal conduct): AGAINST THE APPLICANT.

- a. 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 Applicant.

Paul J. Mason

Administrative Judge

1. Her personal financial statement (PFS) reflects she had \$796.00 disposable income remaining after paying her monthly expenses. (item 9)
2. One of the debts is less than 18 months delinquent. (item 11)
3. "In the last 7 years, have you ever been over 180 days delinquent on any debt?"
4. "Are you currently 90 days delinquent on any debt?"
5. The statement also includes a personal financial statement (PFS) indicating she had \$796.00 left over every month after bills were paid. (item 9)
6. Her monthly remainder in August 2001 was \$886.00.