

DATE: November 5, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19756

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant fell behind on three debts totaling \$20,387.29 following an unplanned move to get away from a violent ex-husband, a divorce, and unemployment. An additional security concern arose by her failure to list a judgment lien, one of the three debts, on her security clearance application. Applicant demonstrated this omission was inadvertent. Applicant has initiated contact or made a good-faith effort to contact her creditors, set up payment plans and is now current and/or paying down her debts. Applicant has successfully mitigated her financial considerations and personal conduct concerns. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 17, 2003, DOHA issued a Statement of Reasons (SOR) [\(U\)](#) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on December 8, 2003, and elected to have a hearing before an administrative judge. The case was assigned to another administrative judge on February 3, 2004, however, due to caseload considerations was reassigned to me on March 2, 2004. On March 22, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered eight documents, which were admitted without objection as Government Exhibits (GE) 1 through 8. The Applicant offered three documents, which were admitted without objection as Applicant Exhibits (AE) A through C. I left the record open after the hearing to afford Applicant the opportunity to submit additional documents. The Applicant timely submitted five additional documents, which were admitted without objection as AE D through H. DOHA received the transcript on March 30, 2004.

FINDINGS OF FACT

Applicant's admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make

the following additional findings of fact:

Applicant is a 46-year-old married woman and is a high school graduate. She has two adult sons from a previous marriage. She requires a security clearance in connection with her employment as a security guard for a firm that provides security services at government installations. She has been employed by this security firm since November 3, 1988, was promoted to Captain December 31, 2001, and has been a site supervisor.

Applicant incurred three debts totaling \$20,387.29 following the contentious breakup of her previous marriage. In 1993, Applicant suddenly left State A and moved to State B fearing physical harm from her ex-husband. Applicant was of the belief that her ex-husband or his family would pay the mortgage after she left. Tr. 32.

Debt 1 is a deficiency judgment with a balance of \$11,377.63 as of May 2003 in favor of a bank for a home she purchased while she was married to her ex-husband. Applicant was solely responsible for this obligation. Applicant has contacted this debtor, negotiated a settlement for a lesser amount, made payment arrangements, and is current on this account. AE B, AE D, AE G, AE H.

Debt 2 is a debt to a company with a balance of \$5,523.32 for vinyl siding installed on the home listed under Debt 1. Applicant has made a documented good-faith attempt to contact this creditor and has been unable to locate them. She stands ready and willing to clear up this debt, but to date has been unsuccessful in her efforts. It appears the debtor is no longer in business. AE D.

Debt 3 is a judgment lien with a balance of \$3,486.34 in favor of an automobile credit company for a car. The car began having mechanical problems and Applicant was unable to pay for the required repairs due to her being unemployed. The car was repossessed. Applicant has contacted this creditor, negotiated a settlement, and paid this account in full. AE A.

Applicant was cited on her SOR for providing false information on her security clearance application (SCA), executed on July 11, 2000, for failing to list a deficiency judgment entered against her on December 23, 1993. See Debt 1 above. The deficiency judgment occurred within the seven year period anticipated by the question. Applicant "mistakenly" counted "only years not months" when she calculated the time lapse between the deficiency judgment and execution of SCA. She credibly testified she did not intend to deceive or mislead the government in her response.

Applicant is a valued and trusted employee, who has proven herself to be "very dedicated, loyal and reliable." AE C.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure (2) of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information.

See Egan, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Under Guideline F, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

In the SOR, DOHA alleged under Guideline F that Applicant was in arrears for three debts. Based on the record evidence, the government has established its case under Guideline F. Applicant has a history of not meeting financial obligations and has experienced an inability to satisfy debts. Disqualifying Conditions applicable under the Directive are contained in ¶ E2.A6.1.2.1, *A history of not meeting financial obligations*; and, ¶ E2.A6.1.2.3, *Inability or unwillingness to satisfy debts*.

Applicant's financial difficulties were in large part due to her move from State A to State B to avoid physical harm from her ex-husband, her divorce, and being unemployed. These events put Applicant in a financial tailspin. Applicant since has made a good-faith effort to resolve this concern by contacting her creditors or by making a good-faith effort to contact creditors, making payment arrangements and/or remaining current on her debts.

The Mitigating Conditions applicable under the Directive are contained in ¶ E2.A6.1.3.3, *The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, . . . , divorce . . .)*; and, ¶ E2.A6.1.3.6, *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. The Mitigating Conditions outweigh the Disqualifying Conditions. On balance, I conclude this Guideline for Applicant.

Under Guideline E, conduct involving . . . *lack of candor, dishonesty* . . . could indicate that the person may not properly safeguard classified information.

In the SOR, DOHA alleged under Guideline G that Applicant had falsified her SCA by failing to list a deficiency judgment she was required to list. Applicant convincingly asserted that she mistakenly subtracted the time in years and not months. Had she calculated the time correctly, she would have listed the deficiency judgment. I found her testimony credible in this regard. Her omissions are attributable to an honest mistake in calculating the seven year period of time anticipated by the question. While Applicant could reasonably have been expected to be more diligent about checking on the status of her financial situation, her judgment lapses are not enough to impute knowing and wilful falsification under Guideline E.

Applicant's explanation of her omission are persuasive enough to avert inferences of knowing and wilful omission. There being no misconduct substantiated, no need to show extenuation and mitigation arises. *Cf.* ISCR Case No. 02-13568 (App. Bd. Feb. 13, 2004).

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 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

Paragraph 2. Guideline E: For Applicant

Subparagraph 2.a.: For Applicant

DECISION

In light of all of 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. Clearance is granted.

Robert J. Tuider

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.