

DATE: May 3, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20150

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 45-year-old security guard employee of a defense contractor. She admitted she has 11 unpaid and delinquent debts totaling about \$3,000, and denied the delinquent debt of \$6,373. All these debts were incurred after Applicant was discharged in Chapter 7 bankruptcy. Applicant failed to mitigate the financial considerations security concerns. Clearance is denied.

STATEMENT OF THE CASE

On May 15, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960 as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations) 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

Applicant submitted a signed and sworn statement, dated June 4, 2003. She admitted all the allegations contained in the SOR, except one, and made no answer on that allegation concerning unpaid child support. Applicant requested her case be decided on the written record in lieu of a hearing.

On November 3, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM by the December 13, 2003 due date. The case was assigned to me on January 23, 2004.

FINDINGS OF FACT

Applicant admitted all but one (subparagraph 1.l.) of the SOR allegations. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 45 years old, unmarried, and works for a defense contractor as a security guard. Applicant has one son, and a granddaughter. (Item 4 at 1 to 3)

Applicant has 12 delinquent debts, some of which she has had for several years. The total amount she owes is \$9,123.00. Applicant filed Chapter 7 bankruptcy in 1997. The Bankruptcy Court discharge \$47,000 of debt. All of her current debts were incurred after her bankruptcy discharge. Applicant owns a \$30,000 automobile with monthly payments of \$515, and has monthly payments of \$190 to a home furniture and equipment rental business. In 2002 when Applicant completed her personal financial statement she had a deficit of \$125.50 in her monthly balance sheet. (Item 5 at 3; Item 7 at 2; Items 8 and 9)

Applicant's current debts and their status are as follows:

SOR ALLEGATION	AMOUNT OWED	CURRENT STATUS	RECORD EVIDENCE
¶ 1.b. medical	\$125	Owed and admitted	Item 7
¶ 1.c. medical	\$155	Owed and admitted	Item 7
¶ 1.d. medical	\$195	Owed and admitted	Item 7
¶ 1.e. emergency doctor	\$168	Owed and admitted	Items 5 and 7
¶ 1.f. hospital	\$50	Owed and admitted	Items 5 and 7
¶ 1.g. hospital	\$50	Owed and admitted	Items 5, 7 to 9
¶ 1.h. collection agency	\$52	Owed and admitted	Items 5 and 7
¶ 1.i. Phone company	\$711	Owed and admitted	Items 5, 7 to 9
¶ 1.j. Bank	\$782	Owed and admitted	Item 7
¶ 1.k. power company	\$182	Owed and admitted	Item 5, 7 to 9
¶ 1.l. credit company	\$6,373	Denied. She owes this money.	Items 7 at 2, 8 at 3, and 9
¶ 1.m. collection agency	\$280	Owed and admitted	Item 7
TOTALS: 12 debts	\$9,123	All debts owed	

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 judgement, 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* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

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. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

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).

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 condition 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 other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. See *Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive Para E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive Para. E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec . Or. 12968 Section 3.1(b).

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 F - Financial Considerations:

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying include:

- (1) A history of not meeting financial obligations. Directive, ¶ E2.A6.1. 2.1.
- (3) Inability or unwillingness to satisfy debts. Directive, ¶ E2.A6.1.2.3.

Conditions that could mitigate security concerns include:

None

CONCLUSIONS

In the SOR, DOHA alleged Applicant failed to pay delinquent debts that were past due, charged off, or placed for collection (subparagraphs 1.b. to 1.m.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1. Applicant has a history of not paying her bills and meeting her financial obligations. She is unable or unwilling to pay her delinquent debts. Applicant admits she has not paid her debts. Therefore, Disqualifying Conditions (DC) 1 (a history of not meeting financial obligations) and DC 2 (an inability or unwillingness to satisfy debts) apply to this case. Applicant was discharged in 1997 of \$47,000 worth of debts in Chapter 7 bankruptcy, but then continued on a path of incurring debts and not paying them. At the same time, she buys an expensive automobile, when there are reliable automobiles on the American car market for sale at half the price. The money Applicant could have saved in following that course of action could have been spent on paying off the list of small debts set forth in subparagraphs 1.b. through 1.m. of the SOR. She also acts imprudently in renting household goods from a rental center and paying \$190 per month for them. She would have saved money if she purchased the same items at other retailers at lower prices. Again, the money saved could have been used to pay her delinquent debts. As it is, her expenses exceed her income each month by \$125.50.

Under the facts and circumstances in this case, there is no cause to believe Applicant will pay off her debts in the near future. I can find no Mitigating Conditions (MC) which apply to this case. Therefore, the finding on Guideline F Financial Considerations is against Applicant.

FORMAL FINDINGS

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

Paragraph 1 Guideline F: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is not clearly consistent with the interest of national security to grant a clearance to Applicant. Clearance is denied.

Philip S. Howe
Administrative Judge