

DATE: March 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22074

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant owes 14 debts totaling approximately \$20,000, which are bad debts, have been written off, or payment on which is overdue. Between 1990 and 1999, the Applicant failed to file federal income tax returns. She failed to file state returns for more than five years. The listed debts include a \$6,600 federal income tax lien. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from debts of such magnitude, her failure to file state and federal income tax returns, and her failure to pay her taxes. Clearance is denied.

STATEMENT OF THE CASE

On June 3, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. In an undated response received on July 2, 2003, the Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing.

On October 2, 2003, the Applicant received a complete copy of the file of relevant material (FORM) dated September 15, 2003, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. No response has been received. In the FORM, Department Counsel presented 11 exhibits (Items). I was assigned the case on December 2, 2003.

FINDINGS OF FACT

The SOR alleges financial considerations (Guideline F), personal conduct (Guideline E), and criminal conduct (Guideline J). The Applicant admits some of her debts and admits not filing her federal income tax returns for years 1990 through 1999. 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 same, I make the following additional findings of fact.

The Applicant is 50 years old, has worked for a defense contractor since November 1999, and is seeking a security clearance.

The Applicant admits owing eight debts totaling \$16,634 and denies seven debts totaling \$3,791. The Applicant has provided no evidence the debts have been paid or a good faith effort arrangement to repay the debts has been made. In July 2001, she was questioned about her debts and said she would contact her creditors to arrange repayment. This was not done. A summary of the debts follows.

Account	Record	Status as of July 2001	Current Status
1.a. Arrow Financial Service \$781.00 and 1.b. \$573.00 Assignee of Bank First	Credit Report (Item 6, Dated April 2003) Admitted in her SOR Response	Will contact creditor to arrange payment.	\$781.00 owed \$573.00 owed
1.c. Cap One Bank \$544.00	Credit Reports (Items 5 and 6) Denied in SOR Response	Will contact creditor to arrange payment.	\$544.00 owed
Account	Record	Status as of July 2001	Current Status
1.d. First Consumers National Bank (FCNB) \$672.00	Credit Report (Item 5) Admitted in her SOR Response	Will contact creditor to arrange payment.	\$672.00 owed
1.e. Midland Credit Management \$6,799.00	Credit Report (Item 6 and Item 11)	Admitted in her SOR Response	\$6,799.00 owed
1.f. Credit Limit \$280	Denied in SOR Response		0 owed
1.g. Hecht Company \$236.00	Credit Reports (Item 5 and 6) Admitted in SOR Response	March 2001 Paid \$83.00	\$236.00 owed
1.h. Lord Taylor \$359.00	Credit Reports (Item 5 and 6) Admitted in SOR Response	Will contact creditor to arrange payment.	\$359.00 owed
1.i. NDC check services \$187.00	Credit Report (Item 5) Admitted in SOR Response	Will contact creditor to arrange payment.	\$187.00 owed
1.j. RJM Acq LLC \$2,199.00 original creditor Providian National Bank VISA	Credit Report (Items 6 and 9) \$1,600 owed and \$1,954.99 collection agency demand (Item 7) Denied in SOR Response	Intended to contact creditor to offer \$100 monthly payments.	\$2,199.00 owed
1.k. IRS \$6,602.00 tax lien for years 1990, 1991, and 1992	Credit Report (Item 5) Admitted in her SOR Response	Will contact creditor to arrange payment.	\$6,602 owed
1.l. Foot Action \$109.0	Credit Report (Item 5) Denied in SOR Response	Will contact creditor to arrange payment.	\$109.00 owed
1.m. Grady Management \$85.00	Credit Report (Item 5) Denied in SOR Response	Denies owing any rent.	\$85.00 owed
1.n. Texaco \$612.00	Credit Report (Item 6) Admitted in SOR Response	Intended to continue \$10 per month payments.	\$612.00 owed
1.o. Verizon Wireless \$377.00	Credit Report (Item 6) Denied in SOR Response		\$377.00 owed

\$19,842	Amount initially alleged.	Amount yet owed.	\$19,562
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The Applicant initially failed to file her tax returns out of carelessness and irresponsibility. (Item 7) The Applicant was a single mother trying to raise her daughter. She claimed more exemptions than she was entitled to so her take home income would be greater. She failed to file for subsequent years because she knew she owed money. She did not have enough income to pay the tax, penalties, and interest charges, so she delayed filing until she had enough money to pay the amount due. The debt remains unpaid. In February 2001, the Applicant, when she purchased a car, became aware the \$6,602.00 tax lien appeared on her credit report. In July 2001, the Applicant stated (Item 7) she would contact the IRS and state tax authority within 30 days to make payment arrangements. The Applicant has provided no evidence showing this was done.

From September 1999 until November 1999, the Applicant was unemployed. She was then employed at \$7.00 per hour, which was \$8.80 less than her previous job. As of July 2001, the Applicant's total net monthly income was \$2,122, her monthly expenses totaled \$1,266, payments on her debts totaled \$591, leaving her with a net monthly remainder of \$265.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts proven must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole people's 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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations (Guideline F) 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.

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

- 1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
- 3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

None Apply.

Personal Conduct (Guideline E) The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

- 5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the

individual and the agency. (E2.A5.1.2.5.)

Conditions that could mitigate security concerns include:

None Apply.

Criminal Conduct (Guideline J) The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

- a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.
- b. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

None Apply.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, 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 which 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant then has the burden of establishing her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, (Financial Considerations). A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but

is required to manage her finances in such a way as to meet her financial obligations. The Applicant owes approximately \$20,000 on 14 debts. The Applicant's financial problems started in 1999 when she became unemployed, and continue to the present. Disqualifying Conditions (DC) 1-(2) and 3-(3) apply.

The Applicant owes approximately \$20,000 and her net monthly remainder is \$265.00. The Applicant denies seven of the debts totaling \$3,791, but has provided no evidence these debts have been paid, that she does not owe the debts, or that she has made a good faith arrangement to repay these creditors. None of the mitigating conditions (MC) apply in the Applicant's favor to the debts either admitted or disputed.

The conduct is recent (MC 1)-(4) in that the debts remain unpaid. MC 4-(5) does not apply because there is no indication the Applicant has received any financial counseling or the problem is being resolved or is under control. The impact on her finances from her 1999 unemployment, and her hourly pay decrease when she did find employment, has not been shown in the record. Even with these events, which occurred four years ago, sufficient time has passed such that she could have made some payment on her debts. It is noted that one of the listed debts is less than \$100 and another less than \$200. Because of the time that has passed since her unemployment, and her inaction since, I find, MC 3-(6) does not apply.

For MC 6-(7) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. A systematic, concrete method of handling the debts is needed, which is not present here.

I find against the Applicant as to SOR subparagraphs 1.a. through and including 1.e. and subparagraphs 1.g. through and including 1.o. The record fails to support she owes \$280.00 as alleged in SOR subparagraph 1.f. I find for her as to this paragraph.

The Government has satisfied its initial burden of proof under Guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. The Applicant failed to file state income tax returns for five to seven years and failed to file federal income tax returns from 1990 to 1999 which resulted in a \$6,602.00 tax lien against her. DC 5-(8) applies.

Initially, the Applicant did not file her state or federal income tax returns because of carelessness and irresponsibility. However, she knew enough about income tax to claim five exemptions so her take home pay would be increased. In July 2001, the Applicant said (Item 7) she would contact the IRS and state tax authority within 30 days to make payment arrangements, however, there is no evidence she has done so. Nor is there evidence the taxes have been paid or income tax returns filed. None of the mitigating conditions apply. I find against the Applicant as to SOR subparagraphs 2.a. and 2.b.

The Government has satisfied its initial burden of proof under Guideline J, (Criminal Conduct). Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. The Applicant failed to file federal income tax returns from 1990 to 1999 and therefore violated Title 26, United States Code, Section 7203. DC a-(9) and b-(10) apply.

None of the mitigating factors apply. The criminal behavior is recent (MC a) because the returns have yet to be filed; the crime was not an isolated incident (MC b) because it involved ten different filings; there is no evidence the Applicant was pressured or coerced into committing the act and those pressures are no longer present in that person's life (MC c); or that the Applicant did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur (MC d); there is no acquittal (MC e); and there has been no showing of clear evidence of successful rehabilitation (MC f). Because it is a crime not to file federal income tax returns and none of the mitigating factors apply, I find against the Applicant as to SOR subparagraph 3.a.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's

age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1. Financial, Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n.: Against the Applicant

Subparagraph 1.o.: Against the Applicant

Paragraph 2. Personal Conduct, Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Paragraph 3. Criminal Conduct, Guideline J: AGAINST THE APPLICANT

Subparagraph 3.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 the Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. DC 1. A history of not meeting financial obligations.
3. DC 3. Inability or unwillingness to satisfy debts.
4. MC 1. The behavior was not recent.
5. MC 4. 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.
6. MC 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.A6.1.3.3.)
7. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
8. DC 5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency.
9. DC a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.
10. DC b. A single serious crime or multiple lesser offenses.