

DATE: November 25, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22163

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Nygina Mills, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has three unpaid and delinquent credit card debts totaling over \$21,000. Applicant made attempts to pay these delinquent debts last year. But their current status is uncertain. She failed to mitigate the financial considerations, personal conduct, and criminal conduct concerns. Clearance is denied.

STATEMENT OF THE CASE

On July 21, 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) and Guideline E (Personal Conduct) 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 August 15, 2003. She admitted all the allegations contained in Paragraph 1 of the SOR. She denied the allegations contained in Paragraph 2 of the SOR. She made no answer to the allegations in Paragraph 3 of the SOR. Applicant requested her case be decided on the written record in lieu of a hearing.

On September 11, 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 filed a response to the FORM, dated October 13, 2003, within the scheduled due date. The case was assigned to me on November 10, 2003.

FINDINGS OF FACT

Applicant's 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. She works as a secretary for a defense contractor, and needs a security clearance for her employment. Applicant is married and has two children. (Item 4 at 1 and 4)

Applicant completed a security clearance application (SCA) on November 9, 2001. On that SCA Applicant disclosed in response to Question 39 (delinquent debts over 90 days) that she had one such debt, a car loan, which met that criteria. At the time that loan was only 30 days delinquent, Applicant disclosed the car had been repossessed and redeemed. Applicant paid that loan in full by January 1, 2003. (Response at 9 and 10; Item 7 at 4)

Applicant did not disclose two delinquent credit card debts she also owed at the same time to a credit card issuer. These delinquent debts were both 90 days or more delinquent at the time Applicant completed the SCA, as shown by a credit report dated November 2001. The total owed on those debts was approximately \$20,000. These debts were included in a debt repayment plan Applicant entered into in 2002. Applicant has not presented any current documentation on the status of this installment payment plan. (Item 1 at 1; Item 6 at 1 and 2; Item 7 at 6)

Applicant's debt to a national department store chain was "paid as agreed" at the time the SCA was completed in November 2001, and did not have to be disclosed on the SCA. That debt later became delinquent, and was included in a debt repayment plan Applicant entered into in 2002. Applicant provided no current documentation about the status of this debt in her Response. (Item 1 at 1; Item 6 at 1 and 2; Item 7 at 6)

Applicant's debts which are the subject of the allegations in the SOR were listed on the credit reports as being her obligation. The automobile title pertaining to the loan Applicant disclosed was in the name of her husband. (Response at 9 and 10)

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 guideline 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:

- (4) the person has received counseling for the problem. Directive, ¶ E2.A6.1.3.4.
- (6) the person initiated a good faith effort to repay overdue creditors or otherwise resolve debts. Directive, ¶ E2.A6.1.3.6

Guideline E - Personal Conduct:

(A) 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. Directive, ¶ E2.A5.1.1.

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

(2) The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; Directive, ¶ E2.A5.1.2.2.

©) Conditions that could mitigate security concerns include:

None

Guideline J: Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. E2.A10.1.1.

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

(1) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged; E2.A10.1.2.1.

(2) A single serious crime or multiple lesser offenses. E2.A10.1.2.2

Conditions that could mitigate security concerns include: E2.A10.1.3.

None

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, I draw only those inferences and conclusions which have a reasonable and logical basis in the evidence of record. Likewise, I have not drawn any inferences that are based on mere speculation or conjecture.

CONCLUSIONS

I conclude that under Guideline F (Financial Considerations) the Government proved its case. Therefore, the Disqualifying Conditions (DC) 1 (*a history of not meeting financial obligations*) and DC 2 (*an inability or unwillingness to satisfy debts*) apply. Applicant's delinquent financial debts are sizable and were when she completed the SCA.

The Mitigating Conditions (MC) applicable here are MC 4 (*the person has received counseling for the problem*) and MC 6 (*the person initiated a good faith effort to repay overdue creditors or otherwise resolve debts*). But these MC cannot be fully applied because Applicant has not provided in either her Answer to the SOR or the Response to the file of relevant material (FORM) any current information on the status of her 2002 debt repayment plan. Therefore, I find against Applicant on this guideline.

Regarding Guideline E (Personal Conduct), I conclude the Government proved its case. The SOR alleges Applicant falsified material facts on the SCA, Question 39 (delinquencies over 90 days) by answering "yes", but then did not disclose all of the debts which met that criteria, as specified in subparagraphs 1.b. and 1.c. of the SOR. DC 2 (*the deliberate, concealment, or falsification of relevant and material facts from any personal security questionnaire or similar form used to determine security clearance eligibility or trustworthiness*) applies to this case. I conclude there are no MC which apply to these facts. I find against Applicant under this guideline.

The last guideline alleged is Guideline J (Criminal Conduct), and I conclude the Government proved its case here also. The Government alleges the actions in Paragraph 1 constitute a violation of Federal law, specifically Title 18, United States Code, Section 1001. That offense makes it a felony to knowingly and willfully make a false statement or representation to any department or agency of the United States government. Applicant protests that she disclosed what

she knew at the time about her delinquent debts. The large amount of the debts and the fact Applicant's credit record shows the two debts in subparagraphs 1.b. and 1.c. were at least 90 days delinquent at the time she completed the SCA persuade me to conclude Applicant knew about these credit card debts when she completed the SCA because they were her debts. She provided no documentary evidence in her Answer or Response to support her contention that the debts were her husband's. I apply DC 1 (*a history of criminal offenses*) and DC 2 (*a series of lesser offenses*). I conclude no MC apply. I find against Applicant on this guideline.

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.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2 Guideline E: Against Applicant

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Paragraph 3 Guideline J: Against Applicant

Subparagraph 3.a.: 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 national interest to grant a security clearance to Applicant. Clearance is denied.

Philip S. Howe

Administrative Judge