

DATE: January 20, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23399

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant owes approximately \$43,000 on five debts which she is unable to pay. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from debts of such magnitude and her inability to pay. 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 DOHA could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(U\)](#) On June 18, 2003, the Applicant answered the SOR and requested a hearing. The case was assigned to me on October 1, 2003. A Notice of Hearing was issued on October 20, 2003, scheduling the hearing, which was held on November 5, 2003.

The Government's case consisted of four exhibits (Gov Ex). The Applicant relied on her own testimony and one exhibit. Following the hearing, two additional documents were received, provisions having been made for their submission following the hearing. Department Counsel (DC) having no objection to their admission, the submissions were admitted as applicant's exhibits B and C. The transcript (Tr.) of the hearing was received on November 18, 2003.

FINDINGS OF FACT

The SOR alleges financial considerations (Guideline F). The Applicant indicates she has paid one of the debts, is unsure of another of the debts, and admits the others. 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 32 years old, has worked for a defense contractor since January 2001, and is seeking a security

clearance. The Applicant has a great work ethic and a commitment to the company. She is willing to come in early and work weekends to get the job done. She has a "can do" attitude and learns quickly. (App Ex B) She displays extremely high ethical conduct, is honest, extremely hardworking, and is an upstanding citizen, excellent mother, and an asset to her community. (App Ex C)

Debt	Nature of Debt	Status	Amount currently owed
1.a. \$627.00	Child Support	Paid by garnishment.	\$ 0
1.b. \$600.00	Medical Bill	Applicant uncertain about this debt.	\$600.00
1.c. \$64.00	Medical Bill	Unpaid. Applicant will try to pay.	\$ 64.00
1.d. \$7,392.00	voluntary truck repossession	Unpaid.	\$ 7,392.00
1.e. \$312.00	Telemarketing account	Unpaid.	\$ 312.00
Debt	Nature of Debt	Status	Amount currently owed
1.f. \$34,710.00	Real Estate investment	Unpaid. Applicant does not feel she owes the money	\$34,710.00
		Total owed	\$ 43,078

The Applicant paid her \$627.00 child support obligation by \$50.00 per month garnishment. (App Ex A) The Applicant is uncertain she owes the \$600.00 medical bill. If she owes it she is unable to pay it at this time because she is a single parent with three children. In June 2003, when the Applicant answered the SOR she said she would attempt to pay off the \$64.00 medical bill, but has yet to do so.

In October 1996, the Applicant and her husband purchased a 1995 pick up truck. The Applicant's husband lost his job after his probation was revoked. He was out of work for nine months. The Applicant and her husband could not afford to keep the truck solely on her income, so they voluntarily returned the truck to the dealer. In July 1997, the \$7,392.00 yet owed on the truck was charged off as a bad debt. The Applicant agreed to pay \$312.00 to enter into a telemarketing business selling goods. She was only in business for two months when she discovered her monthly telephone bill exceeded income received, so she ended the business. In her answer to the SOR, the Applicant said she was willing to clear up this debt. The debt remains unpaid.

The Applicant's and her husband's credit rating was insufficient to allow them to purchase a vehicle. Her husband's cousin suggested they purchase a \$58,000 rental house to improve their credit rating. The house was purchased sight unseen. The cousin represented he owned a mortgage company which was untrue. He had purchased the house for \$30,000, which was approximately half the cost he charged the Applicant and her husband. The cousin forged the Applicant's name to a check and kept \$20,000 for himself for the transaction. (Gov Ex 2) Shortly after purchasing the property, the renters left and the house went to foreclosure. The Applicant refuses to pay this debt. (Tr. 28)

The Applicant is going through a divorce and incurring legal bills. After paying her rent, the Applicant has \$175.00 per week to make her car payment, pay the medical bills, and the cost associated with raising her four children age 5 through 12. She works overtime whenever it is offered. Her car payment is \$250 per month for 26 months. She has not received any financial counseling.

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 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. 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: E2.A6.1.3.

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 his 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.

As of June 2002, the Applicant knew the government was concerned about the her debts when she was interviewed by the Defense Security Service. (Gov. Ex. 2) Since then, she has paid her child support obligation. I find for the Applicant as to SOR subparagraph 1.a. However, she has taken no action to pay, negotiate, or resolve the other six debts. She has stated she would like to pay two of the debts, but has not done so. She says she is financially unable to repay the truck foreclosure debt and will not pay the real estate debt.

None of the Mitigating Conditions (MC) apply in the Applicant's favor. The conduct is recent (MC 1⁽²⁾) in that the debts remains unpaid. MC 2⁽³⁾ does not apply because there are five debts. The repossession of the truck was because the Applicant's husband's probation was revoked and he lost his job. This was a factor beyond their control. However, that occurred five years ago and sufficient time has passed that some type of payment could have been made. I find MC 3⁽⁴⁾ does not apply. The Applicant has not received financial counseling nor is there any indication her financial difficulties are under control. In fact, she has less that \$175.00 per week to pay her car payment and raise her four sons. Therefore, MC 4⁽⁵⁾ does not apply.

For MC 6⁽⁶⁾ 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 her debts is needed, which is not present here. I find against the Applicant as to SOR subparagraphs 1.b through 1.g.

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 Guideline F, Financial: AGAINST THE APPLICANT

Subparagraph 1.a.: For 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.: Against the Applicant

Subparagraph 1.g.: 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. MC 1. The behavior was not recent.
3. MC 2. It was an isolated incident.
4. 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.)
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 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.