

DATE: March 10, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24578

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant admits financial delinquencies, including bad debts and a judgment entered against

her in 1995. She failed to report material facts relating to her financial liabilities and work record on the security clearance application she completed and certified in April 2000. Applicant's financial problems and her lack of candor raise serious security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 4, 2003, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR) 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 September 4, 2003 and requested that her case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 8, 2003. The FORM contained documents identified as Items 1 through 7. By letter dated December 10, 2003, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. By signed and sworn memorandum dated January 26, 2004, Applicant submitted information in response to the FORM. On February 17, 2004, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains 10 allegations of disqualifying conduct. Seven allegations relate to conduct charged under Guideline F, Financial Considerations, and three allegations related to conduct charged under Guideline E, Personal Conduct. In her answer to the SOR, Applicant admitted five allegations and denied five allegations. Her admissions are incorporated as findings of fact.

Applicant is 38 years old, divorced, and the mother of two minor children. She is employed as a junior electronics technician by a government contractor.

Applicant has long-standing financial difficulties. She has moved her household several times and has incurred debts related to unemployment. In 1992 she separated from her husband and moved from state A to state B. From 1992 to 1993, she lived with her children in State B. She chose to be unemployed and was supported by her family and a family friend. In 1993, she moved back to state A and found employment there in 1995.⁽³⁾ In 1997, she moved to state C, where her parents lived. She was unemployed from June 1997 to the fall of 1997. She did not list this period of unemployment on her SF-86. She was subsequently employed for two weeks in the fall of 1997 with a company, but did not list this employment on her SF-86.

Applicant has numerous debts dating from her several relocations and periods of unemployment. In 2001, she purchased a house and is responsible for mortgage payments of approximately \$1,000 per month. She owes \$8,900 to an insurance company for a judgment entered against her in 1995. She refuses to pay the debt because she claims it arose when her automobile was stolen from private property. She is responsible for additional unsatisfied debts, identified in the SOR, which she incurred between 1997 and 2002. She offers no credible evidence to show that she has paid these debts.

In her response to the FORM, Applicant submitted an unsigned refinancing plan that would consolidate a total of \$178,000 in debts not identified in the SOR.

Applicant completed and certified a security clearance application (SF-86) in April 2000. Question 37 on the SF-86 reads as follows: "Your Financial Record - Unpaid Judgments. In the last 7 years, have you had any judgments against you that have not been paid?" Applicant answered "no" to Question 37.

Question 38 on the SF-86 reads as follows: "Your Financial Delinquencies - 180 Days. In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered 'no" to Question 38.

Question 39 on the SF-86 reads as follows: "Your Financial Delinquencies - 90 Days. Are you currently over 90 days delinquent on any debt(s)?" Applicant answered "no" to Question 39.

Question 6 on the SF-86 requires that an applicant list all employment activities by date and type of employment. In completing this portion of the security clearance application, applicants are advised to list "all full-time work, part-time work, military service, temporary military duty over 90 days, self-employment, other paid work, and all periods of unemployment."⁽⁴⁾ In answering Question 6, Applicant failed to list that she was employed by a company for two weeks in the fall of 1997 and she failed to list that she was unemployed from June 1997 to the fall of 1997.

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

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting her financial obligations, and this financial history suggests an inability or unwillingness to satisfy her debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." *ISCR Case No. 98-0810 at 4* (App. Bd. June 8, 2000).

In the SOR, DOHA alleged Applicant had an unpaid judgment (¶ 1.a.), delinquent debts that had been referred for collection (¶¶ 1.b., 1.c., 1.d., 1.e., 1.f.), and a debt for an account that had been charged off (¶ 1.g.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

In her response to the FORM, Applicant stated that she had paid the debts identified at ¶¶ 1.c., 1.d., and 1.f. of the SOR. She provided no evidence of the payment of these debts, which were identified as unpaid in a credit report dated July 15, 2003 and submitted as Item 6 of the FORM. In her answer to the SOR, Applicant denied the debt alleged at ¶ 1.e. of the SOR although that debt was also listed as unpaid on the July 15, 2003 credit report. The Government has established, through the FORM and Applicant's admissions, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. The record also shows that Applicant's financial difficulties were not the result of circumstances beyond her control, and thus, mitigating condition E2.A6.1.3.3. does not apply.

Applicant has not sought counseling for her financial problems, and she submits no persuasive evidence that she has developed and implemented a practical plan for resolving her indebtedness. While Applicant provided some evidence that she had contacted or attempted to contact her creditors, she failed to produce sufficient persuasive records to demonstrate that payment plans she proposed had actually been accepted by the creditors. Thus, neither mitigating condition E2.A6.1.3.4. nor E2.A6.1.3.6. applies to the facts of Applicant's case. Accordingly, the allegations of debt in subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g. of the SOR are concluded against the Applicant.

Guideline E, Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified her answers on her SF 86 to questions 37 (¶ 2.a.); 38 and 39 (¶ 2.b.); and 6 (¶ 2.c.). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly

safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in SOR subparagraphs 2.a., 2.b., and 2.c., the Government has established its case. Applicant's assertions that she did not intend to falsify her responses to Questions 37, 38, 39, and 6 are not credible in light of her awareness of her financial problems over a period of several years, and her creditors' many attempts to put her on notice of delinquent debts. Additionally, Applicant stated that her failure to list her financial delinquencies was an honest mistake and that she truly believed she had been forthcoming with the truth in answering the questions on the SF-86. Applicant's answers to the questions and her statements in her answer to the SOR reveal that she failed to answer Questions 37, 38, 39 and 6 completely, truthfully, and correctly, and this raises a security concern under ¶ E2.A5.1.2.2 of Guideline E.

Applicant's concealment of information she considered embarrassing or negative could make

her vulnerable to coercion or blackmail. E2.A5.1.2.4. Her conduct raises additional concerns under ¶ E2.A5.1.2.5. because it suggests a pattern of dishonesty or rule violation. Applicant's reticence to reveal the truth about her conduct suggests that, under some circumstances, she may put her interests before those of the Government. It is well established that embarrassment is not a mitigating condition under the Directive. ISCR Case No. 99-0557 at 3 (App. Bd. July 10, 2000).

Mitigating condition E2.A5.1.3.1. does not apply to the facts of this case. The information withheld by Applicant is pertinent to a determination of her judgment, trustworthiness, and reliability. Two other mitigating conditions under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsification was an isolated incident, was not recent, and if the Applicant subsequently provided the correct information voluntarily. ¶ E2.A5.1.3.2. While Applicant supplied some of the correct information about her financial delinquencies when questioned by a special agent of the Defense Security Service in June 2002, her falsifications were not isolated incidents and they are recent. Mitigating condition E2.A5.1.3.3. is also inapplicable, since Applicant did not make prompt good faith efforts to correct the falsification before being confronted with the facts. Accordingly, the allegations in subparagraphs 2.a., 2.b., and 2.c. of the SOR are concluded against the Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

DECISION

In light of all of 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 Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Applicant's SF-86 shows employment in state A from 1990 through 1998. *See* Item 4, at 3 and Item 5, at 7.
4. *See* EPSQ SF86 Worksheet at <http://www.dss.mil/epsq/sf86work.doc>. I take official notice, *sua sponte*, of the requirements for completing security clearance applications. These requirements are made known to applicants and are also known to the agency through its expertise in deciding security clearance cases.