

DATE: January 11, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23287

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent financial indebtedness that will soon be fully resolved. She failed to disclose a number of arrests in a security clearance application she submitted and during the course of an interview. Her explanation for failing to disclose the arrests and of the action she took to clear up the omissions prior to being confronted with them is believable. Applicant has mitigated the security concerns caused by her financial considerations and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On May 10, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, for financial considerations, and Guideline E, for personal conduct.

Applicant submitted a sworn answer to the SOR, dated June 21, 2004, requested a hearing, and admitted all but two of the financial consideration SOR allegations. She admitted answering questions about her financial delinquencies incorrectly in the security clearance application she submitted and during the course of an interview, but denied she intended to intentionally falsify the application or omit information during the interview.

This case was assigned to me on September 10, 2004. A notice of hearing was issued on October 18, 2004, scheduling the hearing for November 9, 2004. The hearing was conducted as scheduled. The government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7, and admitted into the record without objection. Applicant testified at the hearing, and submitted fourteen documentary exhibits that were marked as Applicant's Exhibits (AE) 1-14, and admitted into the record without objection. The record was held open to provide Applicant the opportunity to submit additional documents in support of her case. Seven additional documents were timely received, marked as AE 15-21, and admitted into the record without objection. The transcript was received on November 17, 2004.

FINDINGS OF FACT

Applicant's partial admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 42 years old, divorced, and the mother of two daughters, ages 20 and 17. She has been employed by a defense contractor as an information assurance analyst since June 2002. She graduated from high school in 1980, and obtained a bachelor's degree in business administration and information systems in August 2003. She went through seven jobs between October 1994 and June 2001, and was unemployed from June 15, 2001 to April 15, 2002.

Applicant's financial problems appear to have begun in about 1999. Her financial difficulties were caused by the misuse of credit, an illness her daughter suffered, and ten months of unemployment she experienced from 2001-02. The SOR lists six accounts totaling \$19,710.00 that have been submitted for collection, two accounts totaling \$1,089.00 that have resulted in the entry of judgments against Applicant, one charged off account in the amount of \$1,117.00, and one account in the amount of \$2,567.00 that was at least 90 days past due. ⁽²⁾

Applicant has paid three small accounts in full (those listed in subparagraphs 1.f., 1.h., and 1.i.), and has successfully disputed the account listed in subparagraph 1.d. as not belonging to her. She believably testified she was not liable for the account listed in subparagraph 1.c. because it was to be paid by workman's compensation insurance. The account listed in subparagraph 1.j. is one on which she co-signed for a friend, and on which the friend is now current in repaying. Applicant is making small payments on the remaining accounts, and will have them fully repaid by about March 2005 when she receives the proceeds from her one-half interest in real estate that was purchased for \$85,000.00 and is being sold for \$625,000.00.

Applicant consulted a financial investment corporation to assist her with the resolution of her delinquent accounts and the investment of the proceeds she will be receiving from the real estate sale. With their assistance and on their advice, she diverted money from a pension fund to the payment of debts because the tax penalty incurred was significantly outweighed by the interest and penalties that were saved. Her financial advisor expressed confidence that she will remain in full compliance with the payment arrangements they have worked out. He also indicated he will continue to evaluate her progress and make additional recommendations as needed. The advisor believes Applicant has a good grasp and understanding of the information that has been provided to her, and that she has vigorously adopted their recommendations.

Applicant was charged with grand larceny on May 27, 1982, possession of phencyclidine on June 27, 1983, possession of marijuana on April 25, 1990, possession of cocaine on March 10, 1990, ⁽³⁾ and assault and battery of a family member on June 20, 1999. The grand larceny charge occurred after she walked out of a shop in an amusement park with a stuffed animal that she had not paid for. The drug charges resulted from police searches of vehicles that she was either driving or in which she was a passenger. The assault charge occurred when she pushed her roommate out the door of their residence because he was intoxicated. All charges were either dismissed or *nolle prossed*. Applicant's testimony that she was not guilty of any of the offenses is credible.

Applicant failed to list all but one of the above arrests, a possession of controlled substance arrest she reported as occurring on January 1, 1991, in response to applicable questions in a security clearance application (SF 86) she executed on June 24, 2002. She did list charges of contempt of court and having a dog without a license from 2001, both of which resulted in her being found guilty and ordered to pay fines. Applicant explained the omissions were due to a combination of her hurriedly preparing the SF 86 and forgetting the other incidents.

Applicant was interviewed by a special agent from the Defense Security Service (DSS) on October 7, 2002. She provided the agent with information about the controlled substance arrest, the contempt of court, and the dog license charges she had disclosed in the SF 86, and the assault and battery charge, but affirmatively stated: "I have had no other drug-related arrests, charges, or court appearances." She testified that after the interview she realized she had forgotten to tell the agents of the other arrests, and contacted him by telephone to inform him of the omissions. However, the agent informed her the file was no longer in his possession and, therefore, he could not accept any additional

information.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations and Guideline E, pertaining to personal conduct, with their respective DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁶⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

No one has a right to a security clearance⁽¹¹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹²⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹³⁾

CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant has numerous accounts that became delinquent beginning in approximately 1999, and that were either charged off, submitted for collection, or resulted in judgments being entered against her. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply.

While Applicant's financial problems seem to have originated with her misuse of credit, they were severely exacerbated by her daughter's health problems and a lengthy period of unemployment. She has now paid off several of the smaller accounts, retained the services of a financial advisor, and will have abundant funds to satisfy all her creditors within a few months. Applicant is entitled to some credit under Mitigating Condition (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)*; and full credit under 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*; and MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Applicant failed to disclose several arrests in response to applicable questions in the SF 86 she submitted, and during the course of an interview with a DSS special agent. Her explanation for failing to do so is credible, particularly in view of information

she did disclose. Further, having viewed Applicant's appearance and demeanor, and considering the content of her testimony, I find her testimony that she called the agent after they met in an effort to supply the omitted information credible. Because there was no deliberate omission or falsification of the SF 86 or during the interview, no disqualifying condition applies.

Considering all relevant and material facts and circumstances present in this case, including the Applicant's testimony and exhibits, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has mitigated the security concerns that existed in this case. She has overcome the case against her and satisfied her ultimate burden of persuasion. Guidelines F and E are decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: For Applicant

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

Subparagraph e: For Applicant

Subparagraph f: For Applicant

Subparagraph g: For Applicant

Subparagraph h: For Applicant

Subparagraph i: For Applicant

Subparagraph j: For Applicant

Subparagraph k: For Applicant

Subparagraph l: For Applicant

Subparagraph m: For Applicant

SOR ¶ 2-Guideline E: For Applicant

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. The accounts listed in SOR subparagraphs 1.k. and 1.l. are duplicates of the account listed in subparagraph 1.a. The account listed in subparagraph 1.m. is a duplicate of the account listed in subparagraph 1.b.
3. Based upon Applicant's testimony and the contents of GE 7, it appears there were actually two separate arrests for possession of cocaine that occurred on or about March 1990. Considering the circumstances of the arrests and my findings in this case, the number of arrests is irrelevant to my findings.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
11. *Egan*, 484 U.S. at 528, 531.
12. *Id* at 531.
13. *Egan*, Executive Order 10865, and the Directive.