

DATE: October 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24391

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes fifteen debts totaling in excess of \$39,000. She also provided false answers on a security clearance application. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from her unpaid debts and her false answers. Clearance is denied.

STATEMENT OF THE CASE

On August 24, 2004, 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. Security concerns were alleged under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). On September 17, 2004, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing.

On February 10, 2005, the Applicant received a complete copy of the file of relevant material (FORM) dated January 27, 2005, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On February 26, 2005, Applicant⁽²⁾ responded to the FORM. On March 10, 2005, Department Counsel stated there was no objection to the Applicant's response. On March 17, 2005, I was assigned the case.

FINDINGS OF FACT

Applicant admits she owes the 15 debts listed in the SOR, admits to filing for bankruptcy in 1999 and 2000, but denies she sought to conceal any information from the government. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

The Applicant is 41-years-old, has worked for a defense contractor since April 2002, and is seeking a security clearance.

In October 1999, Applicant and her then husband jointly filed for Chapter 7 bankruptcy protection listing assets of

\$8,150 and liabilities of \$96,400. Other than the fact they got divorced, Applicant does not list the reason why they had to file for bankruptcy protection. However, the schedule of debtors lists 12 credit card accounts on which more than \$26,000 was owed. Additionally, the form lists her spouse as having no income and lists her take home pay, before expenses, as \$1,450 (Item 11).

In October 2003, she was interviewed by a special agent of the Defense Security Service (DSS). In a sworn statement given at that time (Item 7), Applicant states the debts were placed in her name because her ex-husband's credit was already bad and then he ruined her credit.

Their attorney told them she did not have to appear in court, that he would handle the matter. However, their attorney failed to appear and the bankruptcy petition was dismissed. In March 2000, Applicant's divorce was final. In October 2000, she and her ex-husband jointly filed for Chapter 7 bankruptcy protection. Her petition was dismissed because they, being divorced, could not file a joint petition. Applicant left the state where the filing occurred and was unaware the petition had been dismissed until she saw her credit report during the October 2003 DSS interview. In the interview, she stated she was under the impression that the bankruptcy was complete when she left the state.

The credit report (item 10) indicated Applicant and her husband had a vehicle repossessed prior to December 1997. The bankruptcy schedules indicates a 1996 repossession. The repossession resulted in a debt of \$6,493 debt (SOR 1. h). Applicant asserts the vehicle was in her husband's possession following their divorce and he never told her the vehicle had been repossessed and the creditor never contacted her.

Applicant and her then husband incurred debts as a married couple with three small children. Following her divorce, Applicant was unable to pay the debts jointly incurred. Applicant believes her husband filed a separate bankruptcy petition and his obligation on the debts was dismissed. In September 2004 (Item 5), Applicant stated she was making "a vigorous effort to contact the creditors to negotiate payoff arrangements and a payment plan to pay (her) delinquent debts."

A summary of the 15 debts in the SOR and their current status follows:

SOR	Creditor	Amount Owed	Current Status
1.a	judgment	\$4,194	Unpaid. Admits it is her debt.
1.b	judgment	\$4,194	Unpaid. Admits it is her debt.
1.c	judgment	\$4,194	Unpaid. Admits it is her debt.
1.d	debt	\$750	Unpaid. Admits it is her debt.
e.	debt	\$706	Unpaid. Admits it is her debt.
f.	collection agency for a wireless debt	\$158	Unpaid. Admits it is her debt.
g.	debt	\$81	Unpaid. Admits it is her debt.
h.	vehicle repossession	\$6,493	Unpaid. Admits it is her debt.
i.	bank debt	\$119	Unpaid. Admits it is her debt.
j.	department store debt	\$1,877	Unpaid. Admits it is her debt.
k.	finance company debt	\$812	Unpaid. Admits it is her debt.
l.	credit card debt	\$7,406	Unpaid. Admits it is her debt.
m.	debt	\$2,901	Unpaid. Admits it is her debt.
n.	debt	\$812	Unpaid. Admits it is her debt.
o.	debt 120 days past due	\$4,612	Unpaid. Admits it is her debt.
	Debts listed in SOR	\$39,309	

On November 20, 2002, Applicant completed a Security Clearance Application, Standard Form (SF) 86. Applicant answered "No" to question 33, which asked if, during the prior seven years, she had filed under the bankruptcy code? She had filed for Chapter 7 bankruptcy protection in October 1999 and October 2000. Applicant states she was mistaken

when she answered the question, but was not trying to conceal information or falsify her answer. Applicant thought the question related only to approved bankruptcies and not bankruptcies that were dismissed.

In her response to the SOR (Item 5), Applicant states she has limited understanding of the written English language, especially the wording of legal and official documents. She indicates she had difficulty completing the SF 86, which was done on the computer.

Applicant answered "No" to question 35, which asked if, during the prior seven years, she had any property repossessed. Applicant asserts it was repossessed after she separated from her husband.

She answered "No" to question 37, which asked if, during the prior seven years, she had any judgments against her that had not been paid. She had three unpaid judgments. She answered "No" to question 39, which asked Applicant if she was currently 90 days delinquent on any debt? She had numerous debts currently 90 days or more delinquent. Applicant states she mistakenly answered these questions, but was not attempting to falsify or conceal any information from the government.

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. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts 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. I conclude the relevant guidelines to be applied here are Guideline F (Financial Considerations) and Guideline B (Personal Conduct).

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 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 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, then the applicant has the ultimate 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. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

The Applicant admits owing 15 debts totaling approximately \$39,000. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

None of the Mitigating Conditions (MC) apply in the Applicant's favor. Although the debts were incurred prior to her March 2000 divorce, MC 1 (E2.A6.1.2.1 *The behavior was not recent*) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (E2.A6.1.2.2 *It was an isolated incident*) does not apply because there are 15 debts. Applicant asserts she was divorced, which is a factor beyond her control. However, Applicant as failed to show how this divorce of five years ago impacts on her ability to repay her debts. It is noted that three of the debts are less than \$200 each.

There has been no showing Applicant has received financial counseling nor is there any indication his financial difficulties are under control. For MC 6 (E2.A6.1.2.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) 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. Applicant asserted that as of September 2004, she was making a vigorous effort to contact the creditors to establish a repayment plan on the debts. However, she failed to document her assertion. Because she has failed to document payment of her debts, I find against Applicant on financial considerations.

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. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions, in providing false information to multiple questions on her November 2002 SF 86 poses a serious potential risk to the nation's security precautions.

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. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance or in other official matters is a security concern.

On November 20, 2002, Applicant completed a Security Clearance Application, Standard Form (SF) 86. Applicant answered "No" to question 33, which asked if she had filed under the bankruptcy code, which she had done in October 1999 and October 2000. Applicant states she was mistaken when she answered the question. She thought the question related only to approved bankruptcies and not bankruptcies that were dismissed. However, Applicant did not know the bankruptcy had been dismissed until her October 2003 interview with DSS, which was almost a year after she completed her SF 86. Therefore, I do not believe her explanation.

Applicant's bankruptcies were pertinent to a determination of judgment, trustworthiness, or reliability. There is no showing the Applicant made a prompt, good-faith effort to correct the falsification before being confronted with the facts. There is no indication her omission was caused by improper or inadequate advice from authorized personnel or based on advice from legal counsel. The falsification was not an isolated incident because she gave a false answer to more than one question on her SF 86. I find against her as to SOR 2.a.

Applicant answered "No" to question 35, which asked if, during the prior seven years, she had any property repossessed. Applicant asserts that at the time of the repossession the vehicle was in her ex-husband's possession and he did not tell her of the repossession. I do not believe this. The October 2000 bankruptcy petition, signed by her, indicated the repossession occurred in 1996. Since the repossession was listed on the October 2000 bankruptcy petition, it is unreasonable for her to say she was unaware of the repossession when she completed her SF 86 in November 2002. I find against her as to SOR 2.b.

Applicant answered "No" to question 37, which asked about unpaid judgments and "No" to question 39, which asked if she was currently 90 days delinquent on any debt? When Applicant left the state, following her divorce, she thought the bankruptcy was complete. It was not until October 2003, during a DSS interview, that she learned the bankruptcy had been dismissed. Therefore, she was under the belief that her debts and judgments had been dismissed when she completed her November 2002 SF 86. I find for her as to SOR 2.c and 2.d.

Because of the serious nature of her falsification, I find for Applicant as to Personal Conduct, SOR subparagraph 2.

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 Considerations: 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: Against 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

Subparagraph 1.p: Against the Applicant

Subparagraph 1.q: Against the Applicant

Paragraph 2 Personal Conduct: AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: For the Applicant

Subparagraph 2.d: For 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. Applicant's name changed between the issuance of the SOR and the FORM.