

DATE: September 23, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01116

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In 1997, Applicant had debts discharged in bankruptcy. Since that time she has incurred numerous debts that have been delinquent for some time. She has had two Chapter 13 bankruptcies dismissed because she was unable to make the payments to the trustee. Applicant mitigated the criminal conduct concerns, but was unable to mitigate security concerns raised by her substantial indebtedness that she cannot pay. 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 15 June 2004, DOHA issued a Statement of Reasons ⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline J (Criminal Conduct) and Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 6 August 2004 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 17 November 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. The FORM was received by the contractor on 24 November 2004. It appears Applicant received the FORM on 1 December 2004, although she did not sign the receipt form. Applicant responded to the FORM by letter dated 21 December 2004. The case was originally assigned to another judge, but reassigned to me on 17 February 2005.

In the FORM, the Government moved to amend the SOR by withdrawing ¶ 1.b. That paragraph alleged Applicant's conviction for welfare fraud and the resulting sentence to a term of imprisonment not to exceed five years disqualified her from holding a security clearance under 10 U.S.C. § 986. Under amendments to 10 U.S.C. § 986 that became effective 28 October 2004, after the SOR was issued, the statute's prohibitions do not apply to Applicant. On 14 December 2004, the Director, DOHA, ordered a moratorium on all cases involving that statute until the effect of the amendments on processing of security clearance cases could be determined. The moratorium was lifted in August 2005.

The Government's motion to withdraw the allegation in ¶ 1.b of the SOR is granted.

FINDINGS OF FACT

Applicant is a 52-year-old computer data entry specialist for a defense contractor. She was first married in 1972. The couple had one child, but divorced in 1973. Applicant has another child, born in 1980. She married again in 1998.

In 1980, after having an argument with her husband, Applicant left the house without her cigarettes or any money. She stole a pack of cigarettes, was arrested, pled guilty, and paid a small fine.

In the early 1980s, Applicant worked for the Internal Revenue Service (IRS). When she was furloughed from the job, she applied for and was granted unemployment compensation. But she was having trouble paying all of her bills. She got called back to work for 100 hours to train and test some new equipment. She failed to report this income on her unemployment claim. She did not report it because she was a single mother, Christmas was coming, and she was broke. She was forced to resign from her job. Ex. 6 at 1.

On 27 November 1984, Applicant pled guilty in state court to welfare fraud, a third degree felony. She was sentenced to a term of confinement not to exceed five years, but the sentence was stayed for one year subject to her fulfilling terms of probation: serve two weekends in jail, pay restitution of \$6,417, and maintain her employment or be in training. Ex. 8. She completed all of the terms of probation and the charge was reduced to a misdemeanor. Ex. 6 at 1.

In 1986, after arbitration, Applicant was reinstated with the IRS because none of the other employees who had done the same thing had been fired or been forced to resign. She eventually took a

buyout from the IRS and used the money to pay off some debts. She went to school and worked, but was unable to find employment that paid enough for her to stay current on her bills. In 1996 she filed for Chapter 7 bankruptcy. She listed more than \$10,700 in assets and more than \$21,658 in liabilities. She received a discharge of her debts in February 1997.

Applicant is responsible for the care of 4 children and 3 adults. Her husband is out of work.

Applicant's current debts include four unpaid judgments totaling almost \$8,000 and eight delinquent debts totaling more than \$5,800 that are in collection status. In addition to her Chapter 7 bankruptcy in 1996, Applicant filed Chapter 13 bankruptcy petitions in September 1998, March 1999, and August 2003. All have been dismissed because Applicant failed to make the necessary payments to the trustee.

Two of the accounts in collection status are school loans. Although those loans were originally delinquent for more than \$4,000, Applicant has made payments such that the most recent evidence of record shows her balance is now just over \$2,700.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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.

CONCLUSIONS

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant was convicted of welfare fraud, a third degree felony, in November 1984 and sentenced to a term of imprisonment not to exceed five years (¶ 1.a), and therefore, was disqualified from holding a security clearance under 10 U.S.C. § 986 (¶ 1.b). Applicant admitted the allegation in ¶ 1.a and did not answer ¶ 1.b. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

The Government's evidence and Applicant's admissions establish potentially disqualifying condition under Guideline J. Applicant admitted criminal conduct (DC E2.A10.1.2.1) amounting to a serious offense (DC E2.A10.1.2.2)-her conviction for welfare fraud, a third degree felony. Applicant has mitigated the criminal conduct security concerns. The criminal behavior was not recent (MC E2.A10.1.3.1) and there is clear evidence of successful rehabilitation (MC E2.A10.1.3.6). Her last criminal offense occurred over 20 years ago and she has not been in trouble with law enforcement since. I find for Applicant on ¶ 1.a.

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had four unpaid judgments totaling almost \$8,000 (¶¶ 2.a-2.d), eight delinquent debts in collection status totaling more than \$5,805 (¶¶ 2.e-2.l), one Chapter 7 bankruptcy in 1996 (¶ 2.m), and three Chapter 13 bankruptcies from 1998-2003 (¶¶ 2.n-2.p). Applicant admitted each of the allegations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting her financial obligations (DC E2.A6.1.2.1.) and is unable to satisfy her debts (DC E2.A6.1.2.3.). Although Applicant has made a good-faith effort to pay her student loans and tried to resolve her financial problems (*see* MC E2.A6.1.3.6), her financial obligations to her family have prevented her from doing so. Some of her delinquent debts resulted from conditions that were largely beyond her control. MC E2.A6.1.3.3. Although that is a mitigating condition that must be considered, Applicant has not made substantial progress in resolving these delinquent debts. I find against Applicant on ¶ 2.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Withdrawn

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Subparagraph 2.f: Against Applicant

Subparagraph 2.g: Against Applicant

Subparagraph 2.h: Against Applicant

Subparagraph 2.i: Against Applicant

Subparagraph 2.j: Against Applicant

Subparagraph 2.k: Against Applicant

Subparagraph 2.l: Against Applicant

Subparagraph 2.m: Against Applicant

Subparagraph 2.n: Against Applicant

Subparagraph 2.o: Against Applicant

Subparagraph 2.p: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).