

DATE: September 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01483

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

When Applicant applied for a security clearance, her credit report reflected delinquent debts to 11 separate creditors totaling about \$18,000.00. After receiving the Statement of Reasons (SOR), she paid two debts totaling about \$1,200.00. She rebutted a delinquent auto loan. She answered "no" to two questions on her security clearance application (SF 86) about delinquent debts, but she disclosed her bad credit record. She rebutted the allegation of falsifying her SF 86, but she did not mitigate the security concern based on financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On October 10, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken under Executive Order 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). The SOR alleges security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct).

Applicant answered the SOR in writing on November 10, 2003. She admitted all but one of the allegations under Guideline F, denied the allegations she falsified her SF 86 under Guideline E, offered explanations, and requested a hearing. The case was assigned to me on July 29, 2004, but was held in abeyance because Applicant, a member of the U.S. Army Reserve, had been recalled to active duty in November 2003 and deployed overseas from February 2004 to February 2005.⁽¹⁾ She was released from active duty in March 2005 and returned to her civilian employment. She was recalled to active duty again from May 31 to June 29, 2005.⁽²⁾

On July 21, 2005, Applicant's employer notified DOHA she had been released from active duty and had returned to her civilian employment. On August 1, 2005, DOHA issued a notice of hearing setting the case for August 19, 2005, and the case was heard as scheduled. I kept the record open until September 6, 2005, to enable Applicant to submit additional

documentary evidence. I received several additional documents on September 2, 2005, and they are incorporated in the record as Applicant's Exhibits (AE) K through R. DOHA received the transcript (Tr.) on September 6, 2005.

FINDINGS OF FACT

Applicant's admissions in her answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 27-year-old senior logistics specialist for a defense contractor. She has worked for her current employer since August 2002. She served in the U.S. Army as an automated logistics specialist from June 1996 to August 2002 and was recalled to active duty as noted above. She was married in January 1997 and has three children, ages eight, six, and three. ⁽³⁾

When she began her civilian employment in August 2002, she executed a SF 86. She disclosed an automobile repossession in response to question 35, but she answered "no" to questions 38 (debts more than 180 days delinquent) and 39 (debts more than 90 days delinquent). In the "general remarks" section of her SF 86, she wrote: "[M]y credit [is] not good. I'm working on consolidating all my bills." Her credit report dated September 3, 2002, reflected delinquent debts to 11 separate creditors totaling about \$18,000.00. All these debts were unpaid and had been charged off or turned over to collection agencies.

On October 21, 2002, Applicant was interviewed about her delinquent debts by a security investigator. In a sworn statement, she declared, "I can afford to pay these bills now because I'm a contractor and my income has doubled." ⁽⁴⁾ In a personal financial statement dated July 21, 2003, submitted in response to a financial interrogatory from a security investigator, she indicated a monthly net remainder of \$420.36. ⁽⁵⁾ Applicant's pay while she was recalled to active duty was about \$3,000.00 per month. ⁽⁶⁾ In her present civilian employment, her net pay is about \$3,795.00 per month. She earns a net pay of about \$250.00 per month in the Army Reserve. Her monthly expenses are about \$1,774.00 per month, leaving a remainder of about \$2,271.00. ⁽⁷⁾

All the debts alleged in the SOR were incurred while Applicant was on active duty in the Army and before her recall to active duty for service in Kuwait and Iraq. The bad check (SOR ¶ 1.e.) dates back to 1997. Applicant did not pay off any debts alleged in the SOR until after she received it. She has not enrolled in any debt counseling programs. ⁽⁸⁾

While Applicant was recalled to active duty, she depended on her husband to take care of the children and pay the bills. Her husband had access to their joint bank account and had a power of attorney from Applicant. ⁽⁹⁾ Her military pay was deposited in the joint bank account. Her husband stopped working and stopped communicating with her. When Applicant returned from overseas, she learned he had not paid the bills. He had moved out of their apartment, stopped paying the rent, left the children with Applicant's parents, and moved to another state. ⁽¹⁰⁾ Applicant is not receiving any money from her husband to support the children. ⁽¹¹⁾ She communicates occasionally with her husband but has not seen him since July 2004, when she came home on leave. ⁽¹²⁾ For most of their marriage, her husband has worked sporadically and "liked to splurge," leaving Applicant primarily responsible for supporting the family. ⁽¹³⁾

The evidence concerning the debts alleged in the SOR is summarized in the following table:

Creditor/ SOR subparagraph	Amount	Status as of Date of Hearing	Record
Telephone/¶ 1.a.	\$120.00	Unpaid	Tr. 70
Gas and Electric/ ¶ 1.b.	\$182.00	Unpaid	Tr. 71
Cell Phone/¶ 1.c.	\$330.00	Unpaid	Tr. 71
Catalog #1/ ¶ 1.d.	\$792.00	Unpaid	Tr. 72
Bad check/¶ 1.e.	\$77.00	Uncertain	Tr. 73

TV Cable/¶ 1.f.	\$372.00	Paid	Govt Exhibit 7; AE-E; AE-G
Charge Account (military clothing)/¶ 1.g.	\$2,238.00	Unpaid	Tr. 74-75
Bank Credit Card/¶ 1.h.	\$830.00	Paid	Govt Exhibit 7; AE-F; Tr. 78
Catalog #2/¶ 1.i.	\$276.00	Attempting to Settle	AE-I
Auto Repossession/¶ 1.j.	\$2,162.00	Unpaid	Tr. 79
Bank Auto Loan/¶ 1.k.	\$10,622.00	Spouse's debt, unpaid	Tr. 80-82

During the time allotted for producing additional evidence, Applicant submitted several letters from co-workers, friends, and a supervisor, all attesting to her hard work, loyalty, honesty, and integrity.⁽¹⁴⁾ Although she testified she had documentation of a \$500.00 payment on the charge account alleged in SOR ¶ 1.g.,⁽¹⁵⁾ she did not submit any evidence of the payment.

The delinquent auto loan alleged in the SOR ¶ 1.k. was incurred when Applicant's husband purchased an auto in 1996 and his mother cosigned the loan. The lender would not allow Applicant to cosign the loan because she had just financed her own auto. Applicant's husband lost his job and the auto was repossessed. As far as Applicant knows, the deficiency on the loan is unpaid.⁽¹⁶⁾ This debt is not attributable to Applicant.

Applicant testified she did not have her credit report when she executed her SF 86. When she tried to answer "yes" to questions 38 and 39 regarding delinquent debts, the computer program asked for specifics. Because she did not have specific information, she changed her answers to "no" and added a comment under "general remarks" that her credit was not good.⁽¹⁷⁾

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), as amended and modified. 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.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline F: Financial Considerations

Under Guideline F, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information. Two disqualifying conditions (DC) under Guideline F could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's financial history establishes DC 1 and DC 3.

Security concerns arising from financial problems can be mitigated by showing they were not recent (MC 1) or an isolated incident (MC 2). Directive ¶¶ E2.A6.1.3.1., E2.A6.1.3.2. MC 1 is not established because Applicant's financial problems have continued to the present. MC 2 is not established because she has numerous delinquent debts spanning several years.

Security concerns arising from financial problems also can be mitigated by showing they are the result of conditions beyond the person's control (MC 3). Directive ¶ E2.A6.1.3.4. The record shows two conditions beyond Applicant's control: and her recall to active duty and her husband's financial irresponsibility while she was deployed overseas. However, I conclude MC 3 is not established because all the debts alleged in the SOR were incurred and delinquent before Applicant was recalled to active duty. Applicant was seriously in debt before she began her civilian employment. Although she worked for her present employer from August 2002 until November 2003 and earned twice as much as she earned while in the Army, she made virtually no progress with her financial problems. Two of the largest delinquent debts, the purchase of military clothing (SOR ¶ 1.g.) and the auto repossession (SOR ¶ 1.j.), were incurred by Applicant, not her financially irresponsible husband.

Her husband's financial irresponsibility after she was recalled and deployed was not the cause of the debts alleged in the SOR, but it made it more difficult for Applicant to resolve them because she was confronted with the additional debts incurred by her husband. However, even where there circumstances outside an applicant's control, an administrative judge may consider whether an applicant acted in a reasonable manner when dealing with financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003). Applicant has assumed responsibility for supporting the family for as long as she has been married. She was aware of her husband's tendency to splurge, as evidenced by his ill-advised purchase of an automobile, soon repossessed, in 1996. Nevertheless, she deposited her pay in a joint account to which her husband had access and gave him her power of attorney, knowing his record of financial irresponsibility.

A good-faith effort to repay or resolve debts is a mitigating condition (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-9020, *supra* at *5, quoting ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not necessarily mitigated by payment of debts only under pressure of qualifying for a security clearance.

I conclude MC 6 is not established. Even though Applicant was questioned twice by security investigators and knew her financial situation was a security concern, she did not resolve any of the debts alleged in the SOR until after she

received it. The bad check (SOR ¶1.e.) had languished for almost eight years before she resolved it. Although she currently has a net monthly remainder of about \$2,272.00, she had not resolved several small debts as of the date of the hearing. Even though I gave her additional time to present documentation pertaining to a substantial payment on one debt, she failed to produce it, request additional time, or offer explanation why she could not produce it. *See* ISCR Case No. 99-00012 at 3 (App. Bd. Dec. 1, 1999) (failure to present documentation in support of claims about financial matters is relevant factor.). I am not convinced she has changed her financial habits or attitude about indebtedness. After weighing the disqualifying and mitigating conditions and evaluating the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on financial considerations.

Guideline E: Personal Conduct

Under Guideline E, conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1. A deliberate omission or falsification of relevant and material facts from a personal security questionnaire is a disqualifying condition (DC 2). Directive ¶E2.A5.1.2.2. When a falsification allegation is controverted, the department counsel has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's or state of mind at the time the omission occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

I conclude DC 2 is not established. Applicant's explanation was plausible and supported by the record. Her disclosure of her bad credit record in the SF 86 is consistent with lack of intent to conceal her financial situation. Having heard Applicant's testimony and observed her demeanor, I found her credible on this issue. While Applicant's explanation suggests negligence, I am satisfied she did not intentionally falsify her SF 86.

FORMAL FINDINGS

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

Paragraph 1. Guideline F (Financial Considerations): 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

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: For Applicant

Paragraph 2. Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For 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 Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. Applicant's Exhibit H.
2. Tr. 49-51.
3. Government Exhibit 1, p. 3; Tr. 42, 94.
4. Government Exhibit 3, p. 2.
5. Government Exhibit 4, p. 4.
6. Tr. 53.
7. Applicant's Exhibit K.
8. Tr. 93.
9. Tr. 54-55.
10. Tr. 56-60.
11. Tr. 60, 63..
12. Tr. 62-63.
13. Tr. 94.
14. Applicant's Exhibits L through R.
15. Tr. 74-75.
16. Tr. 80-82.
17. Tr. 91-92.