

DATE: June 17, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01588

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Juan R. Rivera, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has numerous delinquent accounts, totaling more than \$15,000.00, that have resulted in collection actions begun, lawsuits filed, wage garnishment orders entered, autos repossessed, and accounts being reported as seriously past due. Many of the accounts have been delinquent since the mid-1990s. She recently satisfied several of the accounts by obtaining a loan secured by her husband's truck. There is little prospect the remaining accounts will be satisfied within the foreseeable future. She has failed to mitigate the security concerns caused by the financial considerations present in this case. Clearance is denied.

STATEMENT OF THE CASE

On October 22, 2003, 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 a security concern under Guideline F, financial considerations, based upon 31 delinquent accounts, totaling approximately \$15,000.00. ⁽²⁾

Applicant submitted an answer to the SOR dated November 19, 2003, admitted all but one of the allegations contained in the SOR, and requested a hearing.

The case was assigned to me on February 6, 2004. A notice of hearing was issued March 16, 2004, scheduling the hearing for April 6, 2004. The hearing was conducted as scheduled. The government submitted eight documentary exhibits that were marked as Government Exhibits (GE) 1-8, and admitted into the record without an objection. Applicant testified at the hearing and submitted five documentary exhibits that were marked as Applicant's Exhibits (AE) 1-5, and admitted into the record without an objection. The transcript was received by DOHA on April 14, 2004.

FINDINGS OF FACT

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

Applicant is a 37-year-old woman who has been employed by a defense contractor as a missile technician since May 2002. She previously worked in the same position with her current employer through placement by a temporary employment agency from November 2001 to May 2002.

Applicant graduated from high school in 1985, and attended a junior college from August 1985 to June 1986. She held a variety of relatively unskilled jobs from the time she left college until obtaining her current employment. She also experienced periods of unemployment from June 1999 to October 1999, November 1999 to May 2000, and July 2000 to November 2001.

Applicant first married in August 1989. That marriage ended in divorce in December 1989. She married a second time in June 1991. That marriage ended in divorce in January 1993. She is now married for the third time, having married her current husband in August 1999. Applicant has two daughters, ages thirteen⁽³⁾ and four. Her second husband has custody of the oldest daughter, while her younger daughter resides with Applicant and her husband.

Applicant has accumulated substantial delinquent debt consisting of nineteen collection accounts, three past due accounts, four bad debts, three judgments, one repossession, and one garnishment. The total debt amounts to more than \$15,000.00. Many of the accounts have been delinquent with no action taken to satisfy them since the mid-1990s. Although not listed in the SOR, Applicant was also convicted of the misdemeanor offense of Negotiating Worthless Negotiable Instrument in November 1999, and sentenced to 360 days in jail (suspended), placed on 24 months probation, and ordered to pay restitution of approximately \$1,700.00.

Applicant's financial problems began as a result of a child custody dispute with her second husband in approximately 1993. She was initially granted custody of her daughter, and her ex-husband began threatening to seek custody of the child, complaining that her work schedule prevented her from properly caring for the girl. In response, Applicant quit her job and accepted minimum wage employment. Despite the job change, Applicant lost custody of her daughter in 1994.

Applicant's financial problems escalated when she was diagnosed with cancer in 1996, and had to undergo major surgery, and were compounded by a recurrence of the cancer and additional surgery in August 2002. Further adding to her financial distress is a work-related injury to her husband that has prevented him from working since October 2001. He has been denied continued workmen's compensation benefits for the injury and is in the process of suing his employer. He also has been attending college, is scheduled to graduate soon, and expects to once again become gainfully employed.

Applicant submitted proof that she recently has satisfied five creditors with debts totaling approximately \$3,000.00. The funds to pay those creditors were obtained from a loan she took out that is secured by a lien against her husband's truck. She also testified that she has been unsuccessful in attempts to contact a couple of the other creditors, but acknowledged the bulk of the debt alleged in the SOR remains outstanding. Applicant's net pay is approximately \$1,200.00 per month. She has approximately \$100.00 left after paying the family living expenses, but before purchasing groceries.

Applicant contacted a consumer credit counseling service to seek assistance in resolving her financial situation. She was informed she could not afford the \$700.00 per month payment that would be required to satisfy her creditors, that many of the accounts would be removed from her credit reports within a few years, and that she should just wait and let them be removed from the report by the passage of time. She also testified she considered filing for bankruptcy protection, but did not do so because she was told it would jeopardize her continued employment with the defense contractor.

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, with its respective DC and MC, is 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's has substantial delinquent debt, vis-a-vis her income, that remains outstanding. Much of the debt has been delinquent for many years with Applicant doing virtually nothing to resolve any of it until recently. Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*: and DC 3: *Inability or unwillingness to satisfy debts* apply in this case.

Applicant's financial problems began with her second divorce and employment change in an effort to retain custody of her daughter. They have increased due to medical conditions experienced by her and her husband. Accordingly, 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)* applies.

While there have been significant adverse events that impacted Applicant's ability to pay her debts, there have also been periods of time since the mid-1990s when she had the ability to pay on the debts but did not do so. After she lost custody of her daughter in early 1994, and until she was diagnosed with cancer in 1996, she had only herself to support, and yet did nothing to get out of debt. She had a 2-income family for a portion of the time between her marriage in August 1999 and when her husband apparently became unemployable and stopped receiving workmen's compensation benefits in 2001, and again failed to take action to resolve her debt situation.

Considering all relevant and material facts and circumstances present in this case, including 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 is unable to mitigate this security concern. She has failed to overcome the case against her or satisfy her ultimate burden of persuasion. Guideline F is decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against the Applicant

Subparagraph a-ii: Against 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 Applicant. Clearance is denied.

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. Although the SOR lists 34 accounts, totaling over \$17,000.00, three accounts, totaling approximately \$1,900.00, are duplicates of other listed accounts.
3. Applicant listed her oldest daughter's date of birth as December 21, 1993 in the SF 86 she submitted, but testified the child was born in 1991.
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.