

DATE: July 19, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02003

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Nichole Ligon Noel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated the security concerns raised by her adverse financial history by demonstrating 1) that her financial difficulties were due to circumstances beyond her control, 2) that she had dealt responsibly with her creditors as her means permitted, 3) that the four debts alleged in the SOR had either been paid or entered into a repayment plan by January 2004, and 4) that she had begun to deal with her delinquent accounts well before the SOR was issued. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 18 March 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of financial considerations.⁽¹⁾ Applicant answered the SOR on 19 April 2004 and requested a hearing. DOHA assigned the case to me 7 September 2004 and I convened a hearing on 11 January 2005. DOHA received the transcript 18 January 2005.

PROCEDURAL RULINGS

At the hearing, I gave Applicant until the close of business on 21 January 2005 to provide confirmation of claimed final settlement payments she had arranged with her creditors (Tr. 30). Applicant submitted a timely response on 14 January 2005, the government interposed no objection, and I admitted the response as AE C.

FINDINGS OF FACT

Applicant--a 54-year-old help desk coordinator for a defense contractor since November 1997--seeks to retain the access to classified information she has held since approximately April 1998. She admitted the Guideline F allegation at 1.b.; she denied the allegations at 1.a. (settled in March 2001),⁽²⁾ 1c. (paid in November 2003), and 1 d. (unable to identify alleged creditor).⁽³⁾

Applicant experienced financial problems when she was unemployed from November 1996-November 1997. To meet her living expenses, she exhausted her savings, borrowed money from family members, and over-extended her credit cards. When she regained full time employment, she began the process of cleaning up her finances. She sold an investment property to repay her family members and began making payments to her other creditors.⁽⁴⁾

Applicant's answer to the SOR corroborated her claim that she paid the account at 1.a. in March 2001. AE C confirms her answer that she had paid the debt at 1.c. in November 2003 and was expecting corroboration of payment from the creditor later in April 2004. Regarding the debt at 1.b., Applicant's answer reflected that she had entered a repayment schedule with the creditor in early 2004 for prescribed payments through December 2004, at which time the accounts would be reviewed. The answer also contained proof of the first two payments. AE B documented payments of \$3,569.00 on this debt between February and December 2004, as well as the creditor's January 2005 agreement to accept an additional payment of \$5,475.00 by 18 January 2005 as settlement on the remaining balance of \$13,563.00 (approximately 40%). AE C confirmed that Applicant made the required payment on 13 January 2005.

Applicant's net monthly income is approximately \$3,000.00. She has no difficulty meeting her current household expenses.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline F (Financial Considerations).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁵⁾

CONCLUSIONS

The Government established a Guideline F case under disqualifying conditions 1 and 3,⁽⁶⁾

but the Applicant mitigated the security concerns. First, she demonstrated that her financial problems were due to circumstances beyond his control.⁽⁷⁾ Second, she demonstrated that the debts at 1.a. and 1.c. had been repaid, and she had established a repayment schedule on the debt at 1.b., before the SOR was issued. Third, she demonstrated a consistent record of attempting to address her delinquent accounts as soon as her financial situation permitted and not waiting until she received the SOR to address her debts.⁽⁸⁾ Finally, she appeared at hearing with the alleged debts satisfied or under a well-established repayment plan, and having reestablished her financial footing. I conclude that Applicant is unlikely to experience financial difficulties in the future. Accordingly, I resolve Guideline F for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Applicant's answer included confirmation that the account was closed with a zero balance as of 31 March 2001.
3. At the hearing Department Counsel acknowledged that she did not have any evidence to support her allegation at 1.d. (Tr. 14; GE 7).
4. The record reflects a significant number of smaller debts, not alleged in the SOR, that Applicant paid before the SOR was issued.
5. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. E2.A6.1.2.1. A history of not meeting financial obligations; E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
7. E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . .).
8. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.