

DATE: July 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02391

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems (Guideline F) are mitigated because they were caused by her husband's loss of income and because she appears to have her debt under control. However, she has failed to mitigate the security concerns about her deliberate falsification of her security questionnaire (Guideline E) and an arrest for shoplifting (Guideline J). Clearance is denied.

STATEMENT OF THE CASE

On November 19, 2003, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging security concerns about her finances, personal conduct, and criminal conduct. The SOR further informed her that, based on information available to the government, DOHA adjudicators could not make a preliminary affirmative finding it is clearly consistent with the national interest to continue Applicant's security clearance. ⁽¹⁾

On November 25, 2003, Applicant responded to the SOR (Answer) and admitted to the allegations in SOR paragraphs 1 and 2, but denied the allegations in SOR paragraph 3. ⁽²⁾ She also requested a determination without a hearing. On January 27, 2004, DOHA Department Counsel submitted a file of relevant material (FORM), with 18 exhibits (Items 1 - 18) attached, in support of the government's preliminary decision, a copy of which was sent to Applicant on January 30, 2004. Applicant received the FORM on February 10, 2004. On February 20, 2004, Applicant requested and was allowed a 60-day extension for responding to the FORM. On April 25, 2004, Department Counsel indicated no objection to Applicant's response to the FORM (Rebuttal), dated April 7, 2004. It consisted of a one-page cover letter and a responsive four-page letter with 10 attachments. ⁽³⁾ The case was assigned to me on May 19, 2004. ⁽⁴⁾

FINDINGS OF FACT

Applicant's admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make

the following additional findings of fact:

Applicant is 46 years old and requested a security clearance in connection with her employment by a defense contractor as a procurement specialist. She began working there in June 2000 after working as a bookkeeper for a roofing company for five years. In July 2000, Applicant submitted an electronic personnel security questionnaire (EPSQ).⁽⁵⁾ She has received two awards - in October 2002 and October 2003 - for excellent performance of her duties.⁽⁶⁾

Applicant was unemployed for one month in 1995 and for the last four months of 1991. In between, she worked as a loan processor. She has been married since 1982 and has two children. At some point at least three years before August 2002, her husband suffered a disabling injury at work but was unable to get workman's compensation. He was in a wheelchair for three years and is only recently able to progress in his rehabilitation. His only source of income is a monthly social security payment.⁽⁷⁾

Applicant has experienced financial problems since at least 1997 manifested by several delinquent accounts referred for collection, a voluntary repossession of her car, and a judgment enforced by garnishment of her pay. Based on the record of currently available information, the debts alleged in the SOR can be summarized as follows:

SOR 1.a: This debt is for a musical instrument Applicant rented for one of her children. Applicant is contesting this debt as invalid, claiming she returned the instrument and fulfilled the terms of the contract. She did not list it on her SF 86 for that reason.

SOR 1.b: In July 1998, Applicant returned a used car she had bought because she was having trouble making payments and affording the constant repairs the car required. She was receiving harassing phone calls as early as October 1997 because she was not keeping up with payments. Applicant asserts she does not owe this debt and did not list it on her SF 86 for that reason. In June 2001, Applicant received a letter from the loan company that financed the car informing her she had no more obligations to the lender. Of course, the dealer was still free to pursue any balance due but it appears they did not do so. Further, an October 2001 credit report shows this account as a paid repossession.⁽⁸⁾

SOR 1.c: Between July 1997 and April 2003, Applicant has accrued approximately \$1,000 in delinquent medical bills through 13 hospital visits for treatment for herself, her husband and her children. A law suit brought by the hospital's collection agency resulted in a November 1999 judgment in favor of the hospital. This collection agency also represented the creditor in SOR 1.d, below, and that debt was part of the same suit and judgment. The judgment addressed four of the 13 hospital bills and the debt in SOR 1.d, and was satisfied through garnishment of Applicant's pay as of August 2000. However, the remaining nine hospital bills have not been paid. Applicant listed the judgment and garnishment on her EPSQ in response to questions 34 and 37, but it is clear there were other medical bill delinquencies incurred after the garnishment. Applicant has tried as recently as February 2004 to arrange a payment plan with the hospital.⁽⁹⁾

SOR 1.d: This was a debt owed to a local municipality. As noted in the discussion of SOR 1.c, above, it appears to have been satisfied through wage garnishment in August 2000.

SOR 1.e: This is a debt for veterinary care for Applicant's dog in 1998 or 1999 at a local animal hospital. Soon after receiving the bill, Applicant informed the vet she could not pay the amount on time and offered to pay \$10 each month. It appears she is current on a payment arrangement with the vet's collection agency; however, her original offer was made to the vet, not to a collection agency.⁽¹⁰⁾ Applicant did not list this debt on her EPSQ because she thought it was current, but it is unclear whether this arrangement was entered into before or after she submitted her EPSQ.⁽¹¹⁾

SOR 1.f and 1.g: These debts are medical bills for services rendered in the early 1990's. Applicant disputes these accounts insofar as she thought they were to be paid through her insurance carrier. She further claims the collection agency involved told her in 1992 or 1993 that she was not obligated to pay these debts. She did not list the debts on her EPSQ because she did not think she owed them.⁽¹²⁾

On July 29, 1999, Applicant was arrested for shoplifting. She was not jailed but was issued a summons to appear in

court the next month. When she appeared in court in August 1999, judgment was withheld pending successful completion of four months probation and a misdemeanor offenders course. In December 1999, the charges were dismissed.⁽¹³⁾ In response to the SOR, Applicant claimed she did not list this arrest on her EPSQ because she misread the question and did not realize she was supposed to list even dismissed charges. However, when a Defense Security Service (DSS) agent interviewed Applicant about the arrest, Applicant initially denied the event and "fabricated a story because [she] was embarrassed to admit [what she had done]."⁽¹⁴⁾

A Personal Financial Statement (PFS) Applicant submitted to DSS in August 2002 shows Applicant is current in several accounts such as her mortgage and car loan, as well as making payments to several other past due accounts. The PFS also shows she has a positive net cash flow of about \$260 each month.⁽¹⁵⁾

POLICIES

The Directive sets forth adjudicative guidelines⁽¹⁶⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. 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 of a conclusion for or against an Applicant. However, specific applicable 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. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline E (personal conduct), Guideline F (financial considerations), and Guideline J (criminal conduct).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽¹⁷⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to 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.⁽¹⁸⁾

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her 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.⁽¹⁹⁾

CONCLUSIONS

Under Guideline F, a security concern exists where it is shown an individual is financially overextended, thus being at risk of having to engage in illegal acts to generate funds.⁽²⁰⁾ Additionally, one who cannot manage personal finances may also be unable or unwilling to properly safeguard classified information. Department Counsel has presented sufficient evidence in the FORM to establish a *prima facie* case for disqualification under this guideline and I conclude Guideline F disqualifying condition (DC) 1⁽²¹⁾ and DC 3⁽²²⁾ apply here. Applicant has delinquent accounts that have not been paid or otherwise resolved dating back to 1997.

By contrast, Applicant's financial difficulties were caused in part by the loss of income from her husband's disabling injury. He continues to contribute only minimal income from his disability payments. While the record is not specific about exactly when he was injured, it appears to coincide with Applicant's first known difficulties in 1997 or 1998, the occasion of her voluntary car repossession. The record also shows Applicant contacted several creditors - the

veterinarian, the hospital, and the municipality - in 1998 explaining she was in financial trouble and seeking to establish a repayment plan with each. She has actually made small monthly payments to the creditor in SOR 1.e since 2002.

Finally, the debts alleged in SOR 1.a, 1.b, 1.f, and 1.g are not attributable to Applicant. Of the 13 accounts alleged in SOR 1.c, four were paid through wage garnishment as was the debt listed in SOR 1.d. The remaining debt totals less than \$1,000. Applicant has not accrued any significant new debt since 2000 and appears to be up to date on her current obligations while doing what she can to resolve her remaining delinquencies. Based on the foregoing, Guideline F mitigating condition (MC) 1, [\(23\)](#) MC 3, [\(24\)](#) and MC 6 [\(25\)](#) apply. I conclude Guideline F for the Applicant.

Under Guideline J (criminal conduct), a security concern exists where it is shown an Applicant is willing to disregard the law. Such conduct indicates an inability or unwillingness to abide by rules and procedures established to protect classified information. [\(26\)](#) Department Counsel has presented sufficient evidence in the FORM to establish a *prima facie* case for disqualification under this guideline and I conclude that Guideline J DC 2 [\(27\)](#) applies here. Applicant stole merchandise from a local department store in July 1999. She completed all of the requirements of her sentence by December 1999 and the charges were dismissed. By contrast, she has not been involved in any other criminal conduct in the past five years. Guideline J MC 1 [\(28\)](#) and MC 2 [\(29\)](#) apply here. However, questions remain about the likelihood she may disregard the law again because, as discussed below, she essentially violated federal law when she falsified her EPSQ and when she lied to a DSS agent. I conclude Guideline J against Applicant.

Under Guideline E (personal conduct), conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the Applicant may not properly safeguard classified information. [\(30\)](#) Department Counsel has presented sufficient evidence in the FORM to establish a *prima facie* case for disqualification under this guideline and I conclude that Guideline E DC 2 [\(31\)](#) and DC 3 [\(32\)](#) apply here. Applicant deliberately omitted her 1999 shoplifting arrest when she answered "no" to EPSQ question 26. Because she initially lied to DSS in December 2002 when confronted about this omission, I am skeptical of her current claim that she misread the question as not requiring disclosure of a charge that was dismissed.

As for the alleged falsification of her financial difficulties, Applicant admits her answers to two questions about her past delinquencies were inaccurate but denies she intended to falsify her answers or mislead the government. The questions involved are framed to determine if Applicant had been more than 180 days delinquent on any debt in the last seven years (EPSQ question 38) or if she was more than 90 days past due on any account at the time she completed the questionnaire (question 39). Applicant did not know she owed the debts listed in SOR 1.a, 1.f and 1.g. However, she was aware in 1998 she could not pay the vet bills in SOR 1.e, and in 1997 that she could not pay her car note. Question 38 asks only if an applicant has been more than 180 days past due and does not distinguish based on whether the Applicant had eventually paid or otherwise resolved the debts. On the other hand, she did disclose the judgment and garnishment of wages to satisfy her hospital accounts and her municipal debt. While there appears to be no reason why she should conceal her other debts, her earlier falsifications about her shoplifting arrest undermine her claims she did not intend to falsify her EPSQ in this regard. Further, deliberately concealing such material information the government needs to assess Applicant's suitability for clearance is a violation of federal law. [\(33\)](#) None of the Guideline E mitigating conditions apply here and I resolve this guideline against the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. These facts raise reasonable doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to resolve those doubts, I cannot conclude it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations: FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

Paragraph 2, Criminal Conduct: AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Paragraph 3, Personal Conduct (Guideline E): AGAINST THE APPLICANT

Subparagraph 3.a: Against the Applicant

Subparagraph 3.b: Against the Applicant

Subparagraph 3.c: 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Department Counsel asserts in the FORM that Applicant admitted she falsified her SF 86, but her answer shows she admitted only that her answers to the SF 86 were incorrect, not that she intentionally falsified any answers thereto.
3. An initial review of her response to the FORM showed that pages from the responsive letter were missing from the file copy. I contacted Applicant and Department Counsel about this discrepancy and Applicant sent me another copy of her cover letter and responsive letter on July 7, 2004.
4. On May 20, 2004, Applicant's employer notified DOHA that Applicant had been terminated from her job because she had not yet received a clearance. Because this notification also stated Applicant is eligible for re-hire if she obtains a clearance, and because it is possible Applicant might seek work with a different defense contractor, DOHA has retained jurisdiction of this matter.
5. FORM, Item 4.
6. Rebuttal, Attachment 9.
7. FORM, Items 4 and 12.

8. FORM, Items 10, 13 and 14; Rebuttal, Attachment 5.
9. Answer; FORM, Items 7 - 9, 12, 16; Rebuttal, Attachment 6.
10. Rebuttal, Attachment 7.
11. Answer.
12. Answer.
13. FORM, Items 6, 17 and 18.
14. FORM, Item 5.
15. FORM, Item 12.
16. Directive, Enclosure 2.
17. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
18. *See Egan*, 484 U.S. at 528, 531.
19. *See Egan*; Directive E2.2.2.
20. Directive, E2.A6.1.1.
21. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
22. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
23. Directive, E2.A6.1.3.1. The behavior was not recent;
24. Directive, E2.A6.1.3.3. 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);
25. Directive, E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
26. Directive, E2.A10.1.1.
27. Directive, E2.A10.1.2.2. A single serious crime or multiple lesser offenses.
28. Directive, E2.A10.1.3.1. The criminal behavior was not recent;
29. Directive, E2.A10.1.3.2. The crime was an isolated incident;
30. Directive, E2.A5.1.1.
31. Directive, E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
32. Directive, E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;

33. 18 U.S.C. §1001.