

DATE: March 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04881

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owed five debts totaling approximately \$23,500 accumulated while in college through credit cards and student loans. In October 2003, she began a repayment program to pay her credit card debt. Her student loan payment is now in forbearance. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from Applicant's financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On December 3, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On March 20, 2004, Applicant answered the SOR and requested a hearing. On October 7, 2005, I was assigned the case. On November 8, 2004, I convened a hearing in this matter. The record was kept open to allow Applicant to submit additional documents, which were received on November 30, 2004. Department Counsel having no objection, the documents were admitted into evidence. On November 16, 2004, DOHA received the transcript (tr.) of the hearing.

FINDINGS OF FACT

The SOR alleges security significant financial considerations. The Applicant admits to the five debts but states she has heard nothing from her creditors. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

The Applicant is a 28 year old quality software engineer who has worked for a defense contractor since January 2002 and is seeking to obtain security clearance. Applicant's most recent duty performance rates her as a "Successful Contributor."

All the debts listed in the SOR were incurred while Applicant was in college. She graduated from college in December

2001. Applicant was immature with her credit and did not make good decisions concerning her credit. Her part time jobs did not provide her enough money to pay her credit cards, and they became delinquent. In October 2003, she joined a debt settlement program (DSP) through her employer making \$283.02. monthly payments. (App Ex B) The DSP then makes payments to the five creditors listed in the DSP. (App Ex A) She has paid \$5,660 into the program. Since establishing the DSP, she has not received any correspondence or communication from the creditors.

Applicant had made \$140 monthly payments on her student loan obligation (i.e.), but was unable to continue her payments. In November 2005, Applicant asked for and was granted forbearance on her student loans until August 1, 2005. She did not include her student loans in the DSP because the DSP does not accept student loans. Applicant current income is approximately \$60,000 per year and she has \$17,467.71 in her retirement fund. (App Ex C) Applicant helps to support her parents.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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 restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist 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. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

The Applicant admits owing five delinquent debts totaling \$23,573, which include credit card debt and student loans. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1. *A history of not meeting financial obligations.*) and DC 3 (E2.A6.1.2.3. *Inability or unwillingness to satisfy debts.*) apply.

Applicant's credit card debt (SOR 1.a, 1.b, 1.c, and 1.d) is included in a repayment plan. In October 2003, she started making \$283 monthly payments. Applicant's student loan debt (SOR 1.e, \$14, 690) is currently in forbearance. Her first payment is due in August 2005. Applicant has more than sufficient funds in her retirement program to pay off all of her debt immediately, should she chose to do so. However, she is not required to make immediate payment and her repayment program is sufficient. Mitigating Conditions (MC) 6 (E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*) applies. I find for Applicant as to financial considerations.

In reaching my conclusions, I have also considered the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered 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

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 the Applicant. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.