

DATE: November 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05113

ECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant's financial problems raised security concerns because of her delay in resolving approximately \$15,000 in debts to several creditors, she has now made a good-faith effort to resolve her debts by paying two creditors in full and by having the bankruptcy court discharge the remainder of her debts in June 2004. In the light of several circumstances beyond her control which led to these debts, she has now demonstrated her commitment to financial responsibility. She has a stable job and is highly regarded for her commendable behavior. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on January 29, 2004. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. ⁽¹⁾ The SOR alleges specific concerns over finances (Guideline F). Applicant responded to these SOR allegations in an Answer notarized on March 5, 2004, and requested a hearing.

After Department Counsel stated the case was ready to proceed, on June 25, 2004, the case was assigned to me. After a mutually convenient date for hearing was identified, a Notice of Hearing issued on July 20, 2004, set the matter for August 12, 2004, at a location near where Applicant works and lives. At the hearing the Department Counsel offered six exhibits (Exhibits 1-6). All were admitted into evidence. The Applicant offered three exhibits (Exhibits A-C) which were admitted into evidence. She testified herself and called three witnesses. The transcript (TR) was received on August 18, 2004.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 40 years old, has been employed by a defense contractor in State #1 since 2000 and completed a Security Clearance Application in July 2002. (Exhibit 1) She served on active duty in the military from 1981 to 1985 and received an honorable discharge. She has received clearances in 1991, 1996, and 1997. (Exhibit 1; Exhibit A; TR 33-34)

Applicant was married in 1999 and widowed in 2001; she previously was married in 1985 and divorced in 1994. She was first married in 1981 and divorced in 1985. She has three children born in 1983, 1998, 1992 and has a stepchild born in 1992. (Exhibit 1; Exhibit A; TR 36-37)

Finances

On her Security Clearance Application Applicant disclosed her financial problems which resulted from her second marriage and divorce in 1994. In March 1998 she contacted Consumer Credit Counseling (CCC) in State #1 to consolidate her monthly payments and reduce finance charges and made timely payments until October 1999. She left one employer in October 1999 and was to start a new job in November 1999 in State #2. However, she was not able to move when her previous spouse went to court to object to her leaving the state with their children. Thus, she was unable to accept the new position and had to look for a different job as the court continued the case which was not resolved until January 2001; she faced costs of approximately \$3,000. Because of court costs and her lack of income, her payments to CCC became delinquent. The CCC dropped her from the program. In February 2000 she found her current job in State #1. However, her husband did not have a job from May 2000 to January 2001. Then in February 2001 her husband was killed in an automobile accident. Since they were originally from State #3, she incurred expenses to return there for the funeral and burial; costs were approximately \$7,600. She continued to try to address her financial situation by retaining only one credit card, but had difficulties resolving the outstanding debts. She returned to CCC, but did not have sufficient income to enter that program. She also attempted to re-finance her home to resolve her debts as she intended to pay her debts in full, but she did not have enough equity. In October 2003 her mother died, and she incurred more debt to attend the funeral. Applicant owes approximately \$1,000 for her mother's funeral. She testified that the circumstances which led to her debts were beyond her control. However, she now lives within her means. (Exhibits 1, 2, 3; Exhibits A, C; TR 30-32; 35-44)

In October 2001 she reported income of \$2,148 per month and monthly expenses of 1,685; with a net remainder of \$389; she made monthly payments of \$35 each for her past debts to Creditors #5 to whom she owed \$1,775 and #7 to whom she owed \$3,062. (Exhibit 3) In November 2002 she reported income of \$2,278 per month and monthly expenses of \$2,074; with a net remainder of \$35 she could not make monthly payments for any of her past debts. (Exhibit 2) In October 2003 she reported income of \$2,426 per month and monthly expenses of \$1,339; with a net remainder of \$377; she was not making monthly payments for any of her past debts, but was making payments to one current creditor. (Exhibit 4)

Chapter 7 Bankruptcy

Applicant tried but was unable to make a reasonable payment schedule with her creditors, In March 2004 she retained counsel and filed for Chapter 7 bankruptcy. Her debts were discharged in June 2004. She retained her home and her vehicle where her payments are current. She has two children at home, ages 12 and 16; their father provides \$700 per month in support. (Exhibits A, B; TR 32-33; 34-35; 42) In August 2004 she had no credit cards. (TR 39-40) Applicant owns her own home valued at \$65,000. (TR 50) The status of her debts is as follows:

SOR 1.a.. Applicant made an attempt to settle her debt to Creditor #1 of \$1,599 in March 2004; however, the debt was discharged in bankruptcy. (Exhibits 5,6; Exhibits A, B)

SOR 1.b. Applicant paid her debts to Creditor #2, of \$187 in full. (Exhibits 5,6; Exhibit A; TR 45)

SOR 1.c Applicant made an attempt to settle her debt to Creditor #3 of \$1,760; however, the debt was discharged in bankruptcy. (Exhibits 5,6; Exhibits A, B)

SOR 1.d Applicant made an attempt to settle her debt to Creditor #4 of \$1,153; however, the debt was discharged in bankruptcy. (Exhibits 5,6; Exhibits A, B)

SOR 1.e. Applicant made an attempt to settle her debt to Creditor #5 of \$1,754; however, the debt was discharged in bankruptcy. (Exhibits 5,6; Exhibits A, B)

SOR 1.f. Applicant made an attempt to settle her debt to Creditor #6 of \$2,123; however, the debt was discharged in bankruptcy. (Exhibits 5,6; Exhibits A, B)

SOR 1.g. Applicant made an attempt to settle her debt to Creditor #7 of \$3,649; however, the debt was discharged in bankruptcy. (Exhibits 5,6; Exhibits A, B)

SOR 1.h.. Applicant paid her debt to Creditor #8 of \$513. (Exhibits 5,6; Exhibit A; TR 35; TR 45)

References

Applicant's supervisor since February 2000 commended the quality of her work. She is a key employee in a security department. He views her as "extremely honest." To his knowledge Applicant does not live beyond her means. He has evaluated her as exceeding expectations and has recommended her for a raise based on her last performance review. He has recommended her for additional training because of her abilities. Her current annual salary is \$31,000; and he has recommended a 4% raise for her. (Exhibit C; TR 22-26)

A personal friend who has known Applicant for five years testified that she was trustworthy. She observed that Applicant does not live beyond her means. (TR 18-20)

A work friend who has known Applicant for a year stated that Applicant is very trustworthy. (TR 28-30)

Previous supervisors provided favorable references for Applicant. (Exhibit C; TR 47-49)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline F - Financial Considerations

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

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);
4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Financial Considerations

Applicant has mitigated her financial concerns and overcame disqualifying concerns (DC) which developed under DC (1) a history of financial problems and subsequently showed DC (3) an inability or unwillingness to satisfy all of her debts. At the time of the investigation she had debts that totaled approximately \$15,000; however, these debts arose largely because of circumstances beyond her control which are detailed in the findings - a divorce from one husband who later challenged her leaving State #1 to take a new job. Later she faced the accidental death of her third husband and later the death of her mother.

Applicant mitigated these concerns either by resolving two of these dated debts or by having the remainder discharged in bankruptcy in June 2004. Thus, the following mitigating conditions apply: MC 3. the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a death, divorce); MC 4. there are clear indications that the problem is being resolved or is under control; and MC 6. Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has sufficiently demonstrated she is now financially responsible as she has fully resolve these debts, and so has effectively mitigated security concerns over debts alleged in SOR 1.a. through 1.h.

Further Applicant has stable employment and is highly regarded by her supervisor for her performance. She is also high regarded by her work and personal friends. She owns her own home and lives within her means. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant under SOR Paragraph 1; I conclude that she has mitigated the allegations in SOR subparagraphs 1.a. through 1.h.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For 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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.