

DATE: March 14, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06083

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has delinquent debts dating back to at least the mid-1990s. She has satisfied one account, claims to have paid others without submitting any proof of payment, and recently made arrangements to begin making payments on several additional accounts. However, her credit report discloses a number of accounts that remain delinquent and on which no action has been taken. Applicant did not intentionally provide false information in the security clearance application she submitted in June 2002. She has failed to mitigate the security concerns caused by her financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On September 21, 2004, 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 security concerns under Guideline F for financial considerations and Guideline E for personal conduct.

Applicant submitted a sworn answer to the SOR that was received by DOHA on October 14, 2004, and requested a hearing. Applicant admitted four of the alleged delinquent accounts, denied all others, and also denied the personal conduct allegation.

This case was assigned to me on January 13, 2005. A notice of hearing was issued on January 21, 2005, scheduling the hearing for February 4, 2005. ⁽²⁾ The hearing was conducted as scheduled. The government submitted six documentary exhibits that were marked as Government Exhibits (GE) 1-6, and admitted into the record without an objection. Applicant testified and submitted 19 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-19, and admitted into the record without an objection. The record was held open to February 25, 2005, in order to provide Applicant the opportunity to submit additional documents in support of her case. Six additional documents were received, marked as AE 20-25, and admitted into the record without an objection. ⁽³⁾ The transcript was received

February 15, 2005.

FINDINGS OF FACT

Applicant's partial admissions to the allegations 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 64 years old. She graduated from the eighth grade in 1955, and ended her formal education at that time. She was married in February 1961, and that marriage ended in divorce in February 1978. She has been married a second time since November 1998. She worked as a domestic in the homes of a variety of people from January 1978 until September 2001. Many of those people wrote employment letters of recommendation for her establishing they routinely trusted her in their homes alone and with their possessions. They uniformly attest to her being completely reliable, loyal, dedicated, honest, and trustworthy.

The Chief, Document Management Branch, Information Management Office at the Headquarters, United States Army Reserve Command where Applicant is employed wrote that Applicant "is a very resourceful and highly dedicated employee. Her conduct on the job has been beyond reproach and her job performance has been consistently superb." (AE 2) Her supervisor opined that she is a dedicated and trustworthy employee, and expressed a desire to retain her in his employ.

While Applicant's statements, testimony, and other documents indicate her financial problems began as a result of health issues, a review of the various credit reports indicates that she was delinquent on many accounts before either her or her husband's health problems arose. Specifically, the debts alleged in SOR subparagraphs 1.b., 1.c., 1.e., 1.g., 1.i., and 1.k., totaling more than \$11,000.00, were all delinquent prior to July 1997.

Applicant testified she was indebted to the creditor listed in SOR subparagraph 1.a. in the amount of \$242.00, and acknowledged she had not made any payment on the account. On February 7, 2005, she wrote a letter to a credit reporting agency seeking either proof that account belonged to her or action to have it removed from her credit report. (AE 20) She testified she has paid the account alleged in SOR subparagraph 1.b., but failed to present any evidence in support of that claim. She made a \$50.00 payment on the \$221.00 debt alleged in SOR subparagraph 1.c. on February 28, 2005. (AE 25)

Applicant testified she needed additional time to check into the charged off account listed in SOR subparagraph 1.d. in the amount of \$4,496.00, and then included the account in the letter to a credit reporting agency seeking either proof the account belonged to her or action to have it removed from her credit report. (AE 20) Applicant denied she was indebted to the creditor listed in SOR subparagraph 1.e., although, in a statement she provided on November 18, 2002, she admitted owing \$3,809.00 on that account.

The debts alleged in SOR subparagraphs 1.f. and 1.g. are the same account. Although this account, now owing in the amount of \$855.27, was placed for collection in June 1997, Applicant just began making payments of \$10.00 per month on the account in November 2004. Applicant is currently indebted to the creditor listed in SOR subparagraph 1.h. in the amount of \$3,910.95, and began making \$50.00 per month payments on this account in December 2004. Applicant testified the account listed in SOR subparagraph 1.i. in the amount of \$1,430.00 has been paid, but failed to present any evidence to support that claim.

Applicant testified she owed the \$7,250.00 collection account listed in SOR subparagraph 1.j., but again included this account in the letter she wrote to a credit reporting agency seeking either proof the account belonged to her or action to have it removed from her credit report. (AE 20) The charged off account in the amount of \$5,018.00 listed in SOR subparagraph 1.k. was satisfied on June 30, 2003. (AE 14) The balance owing on the collection account listed in SOR subparagraph 1.l. is \$4,188.18. Applicant has been making \$50.00 per month payments on this account since October 2004, and has sent the creditor postdated checks through June 2005.

Applicant has not made any payment on the \$37.00 account listed in SOR subparagraph 1.m. that was placed for collection in November 2000. On February 18, 2005, she made a \$25.00 payment on the \$199.00 collection account listed in SOR subparagraph 1.n. She provided confusing testimony indicating that these two accounts are owed to the

same creditor.

Applicant attributes her financial delinquencies to physical problems she developed in 1999 when she began to lose her sight. She found it necessary to cut back on her employment because of the inability to drive to some of the homes to which she provided domestic services. She also partly blames her financial problems on a permanent back disability her husband incurred in July 1997, which prevented him from returning to work until approximately January 1999. (AE 9) However, they did not marry until November 1998. (GE 1) Sometime after they were married, he experienced additional employment problems caused by a layoff and a production cut back on his job, which most likely did contribute to Applicant's continuing financial problems. (AE 9)

In 2000, Applicant and her husband decided to sell their home in a far western state, and move to their current state of residence to allow Applicant to take advantage of state sponsored rehabilitative services in that state. She was evaluated by the state's division of rehabilitation services on November 16, 2000, and diagnosed with Glaucoma. Her functional limitations were described as: "Near complete loss of vision, visual field left eye. Good visual acuity, severely restricted visual field right eye." Her prognosis was: "possible worsening of visual field in right eye." She was thereafter enrolled in a vocational work plan leading to job placement assistance. (AE 16)

She has now been employed through a board of education work training and employment center since September 2001. Initially employed part-time as a custodian, she was placed working full-time in the mail room of an Army Reserve Command in December 2003. She continues to work in that job, and in 2004 earned \$25,930.66. Her husband earned \$26,624.21 in 2004, but has money deducted from his pay to provide support for children from a prior relationship. According to a financial statement Applicant submitted on November 18, 2002 (GE 2), she had a net monthly remainder of \$724.00 with virtually nothing being paid on the many delinquent accounts listed therein.

Applicant submitted a security clearance application (SF 86) on June 26, 2002 in which she did not list any delinquent accounts. The facility security manager for the work training & employment center that placed Applicant submitted a statement in which she explained that Applicant did disclose two delinquent accounts, but those accounts were not listed in the SF 86 because of an error by the human resources department. (AE 1) Both the facility security manager and Applicant explained the failure to list additional debts was because the form provided to Applicant only contained space to list two debts.

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 and Guideline E, pertaining to personal conduct, with their respective DC and MC, are 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.

The SOR lists more than \$30,000.00 in delinquent debt, many dating back to the mid-1990s. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debt* apply in this case.

Many of Applicant's debts became delinquent before she and her husband experienced the physical and work related problems that began in July 1997. Those difficulties unquestionably impacted Applicant's ability to resolve her credit problems for some period of time; however, the facts that she allowed debts to become delinquent before her illness, that she had sizeable discretionary income as revealed in her November 2002 statement that could have been applied to satisfy her delinquent accounts but didn't, and that she has been working full-time since December 2003, but only recently began to make payments on some of her debts, deprive her of consideration under 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)*.

Further, while Applicant has fully resolved one large debt, and is in the process of making payments on several others, there are other debts that either remain delinquent with no action being taken to resolve them or on which Applicant failed to present any proof of the payments she claims to have made. Accordingly, C 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* does not apply. Guideline F is decided against Applicant.

The evidence establishes Applicant at least partially disclosed her financial condition when she submitted information to her employer to be used in preparing her SF 86. Her explanation for not listing all her delinquent accounts is credible. Guideline E is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: For the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: For the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

SOR ¶ 2-Guideline E: For the Applicant

Subparagraph a: For 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. Applicant waived the 15-day notice requirement on the record.
3. Following the hearing, Applicant sent several e-mails to Department Counsel requesting additional time to submit post-hearing documentation. Department Counsel forwarded those e-mails to me, and on February 10, 2005, I granted Applicant an extension until March 11, 2005 to submit additional documents. On March 10, 2005, I denied Applicant's second request for additional time to submit documents. The series of e-mails have been marked as Appellate Exhibit I, and are included in the file.
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.