

DATE: March 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06259

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems continue to raise security concerns because of her delay in resolving over \$20,000 in debts to ten creditors. Although she has recently communicated with all of her debtors, she developed a plan to pay only two out of ten long-term debts. While she had medical problems that have limited her income since 2000, she incurred the majority of these debts before she was diagnosed with her illness. On the other hand, although she failed to detail all of her debts on her 2002 security form, she rebutted personal conduct concerns and demonstrated that the omissions were not from a wilful intent to falsify. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on March 17, 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) and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on April 2, 2004, and requested a hearing.

After Department Counsel stated the case was ready to proceed, on June 28, 2004, the case was assigned to me. A mutually convenient date for hearing was identified; and a Notice of Hearing issued on July 20, 2004, set the matter for August 11, 2004, at a location near where Applicant works and lives. At the hearing the Department Counsel offered the Government's three exhibits (Exhibits 1-3) which were admitted into evidence. The Applicant offered 18 exhibits, which were admitted into evidence (Exhibits A-R), and asked that Official Notice (ON) be taken of two exhibits. She testified herself and called one witness. Applicant was given an additional 14 days until August 25, 2004, to submit additional evidence; and the government had five days until August 30, 2004, to review the document. (TR 73-75, 103, 113) On August 24, 2004, Applicant requested and was granted an extension to September 1, 2004, to submit her additional evidence. She forwarded an additional 44-page exhibit (Exhibit S) to Department Counsel for her review. After Department Counsel made no objection, Exhibit S was admitted into evidence; and the record then closed. 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, 39 years old, became employed by a defense contractor in State #1 in November 2002 and completed a Security Clearance Application (SF 86) in December 2002. She left that assignment in November 2003. (Exhibit 1; TR 46; 91-92; 97, 99-101) In August 2004 she was employed with a different employer⁽²⁾ as she now works for a temporary agency. (TR 46-47, 90-91) She received an M.B.A. from a school in State #1 and attended one year of law school. (Exhibit 1; Exhibits B, C; TR 55, 93)

Personal Conduct

Applicant signed the SF 86 and certified that the statements on the form were true and correct. Applicant disclosed some, but not all of her financial delinquencies on the form. (Exhibit 1) A December 20002 credit report documented additional undisclosed delinquencies. (Exhibit 3) A Defense Security Service (DSS) Special Agent (SA) interviewed her in January 2003 as he noted that her SF 86 did not include all of her financial delinquencies listed on the credit report. Applicant explained that she did not list all of them because she did not think of them all when she completed her security forms; however, she had no intent to falsify her forms. In addition, she made a disclosure in the general remarks section of the SF 86 about how her illness had adversely affected her employment and financial situation. Applicant believed that her accounts written off as bad debts were no longer delinquent; she conceded she was in error as she did not read her credit report correctly. The agent found her explanations credible and did not think she willfully falsified her security clearance form. He believed that she simply did not have access to all of the information included on the December 20002 credit report he reviewed. (Answer; Exhibits 1, 2; TR 31-33; 37-43; 64-66; 95-97)

Finances

Applicant's financial problems developed in 1997 when she attempted a debt consolidation program and made a payment of \$842 in August 1997. (TR 55; Exhibit R) In November 1998 a debt management organization detailed her debts to ten creditors for a total of \$20,361; at that point all of her accounts were current. (Exhibit S) In the 1999 to 2000 period she continued to live beyond her means with credit card purchases. These financial problems worsened after she became ill with Graves' Disease⁽³⁾; she was diagnosed in March 2000 which led to her unemployment or part-time temporary employment due to her illness. She never sought assistance even though she believed she might have qualified for disability assistance. (Exhibit 2; TR 49-52, 53-54; ON I)

When she realized she was "overwhelmed with debt," she met with a consumer credit counseling specialist but was "turned away" because she did not earn enough money to qualify for a re-payment program. She stated that they advised her not to worry about these debts as her state was a "debtor state" where garnishments are rare. She considered bankruptcy, but resisted as she thought that would prevent her from attending law school. She was accepted into law school in State #2 in February 1999. (Exhibit B, R: TR 52-53)

When the DSS SA interviewed the Applicant, she claimed she initially stated to the DSS SA that she had an intent to pay her debts but did not know when she could do so. Later she signed a written statement that she "no intent to pay" any of her delinquent accounts as most of them had been written off. (Exhibit 2, 3; TR 31-36, 40; 55-56) Applicant testified that she persisted in a belief that her debts were "considered settled" as the accounts were written off and the creditors no longer contacted her. (TR 56)

In 2002 she reported \$12,826 in wages and \$3,428 in unemployment to the IRS. (Exhibit P; TR 57) In January 2003 her income was \$1,088 per month; she had monthly expenses of \$487, made monthly debt payments of \$234 and had a net remainder of \$367. She stated in her financial statement she had total assets of \$26,000 including two cars, mutual funds and an IRA. (Exhibit 2)

Her debts include the following:

SOR 1.a.. Her debt to Creditor #1 of \$1,454 for a cell phone was charged off as a bad debt in December 1999. (Exhibit 3; TR 77-78) In April 2004 she said she was unable to pay this debt due to part-time wages and recurring medical expenses. (Answer) In August 2004 the debt remained unresolved. (TR71-73) A credit collection agency advised her in August 2004 that she would need to pay them \$1,318 to resolve this account. The account remains unresolved. (Exhibit S)

SOR 1.b. Her debt to Creditor #2, a credit card company, of \$3,948 was charged off as a bad debt in December 1999. (Exhibit 3) In April 2004 she said she was unable to pay this debt due to part-time wages and recurring medical expenses. (Answer) In June 2004 she made arrangements to make a \$170 monthly payment to reduce this debt. Her balance was \$845, but she continues to make monthly payments. (TR 61-62, 73; Exhibit I, Exhibit S)

SOR 1.c. Her debt to Credit #3 for \$1,106 for a printer and supplies was charged off as a bad debt in January 2000. (Exhibit 3; TR 77) In April 2004 she said she was unable to pay this debt due to part-time wages and recurring medical expenses. (Answer) The account remains unresolved. (TR 76-77; Exhibit S)

SOR 1.d. Her debt to Creditor #4 for \$1,242 was charged off as a bad debt in January 2000. (Exhibit 3) In April 2004 she said she was unable to pay this debt due to part-time wages and recurring medical expenses. (Answer) In August 2004 Creditor #4 confirmed that she owes \$1,242. (Exhibit S) The account remains unresolved. (TR 78-79; Exhibit S)

SOR 1.e. Her debt to Creditor #5 for \$2,014 for a credit card was charged off as a bad debt in February 200. (Exhibit 3) In April 2004 she said she was unable to pay this debt due to part-time wages and recurring medical expenses. (Answer) It remained unresolved at the time of the hearing. (TR 79) In August 2004 Applicant advised she was able to make payment arrangements with Creditor #5. She has made one payment of \$10.88 in August 2004. (Exhibit S)

SOR 1.f Her debt to Creditor #6 for \$9,121 was the deficiency balance owed after the resale of her car which was repossessed for nonpayment. (Exhibit 3) In April 2004 she said she was unable to pay this debt due to part-time wages and recurring medical expenses. She stated she voluntarily surrendered this car in April 2000. The account remains unresolved. (Answer; TR 79-80; Exhibit S)

SOR 1.g. Her debt to Creditor #7 for \$333 was placed for collection in March 2000. (Exhibit 3) In April 2004 she said she was unable to pay this debt due to part-time wages and recurring medical expenses. (Answer) She believed this debt was for a ring she purchased in 1990. The account remains unresolved. (TR 81-83; Exhibit S)

SOR 1.h. Her debt to Creditor #8 was placed for collection for \$1,985 in March 2000. (Exhibit 3) In April 2004 she said she was unable to pay this debt due to part-time wages and recurring medical expenses. (Answer) The account remains unresolved. (TR 84; Exhibit S)

SOR 1.i. Her debt to Creditor #9 for \$1,439 was for a delinquent loan installment incurred in June 2000. (Exhibit 3) In April 2004 she said she was unable to pay this debt due to part-time wages and recurring medical expenses. (Answer) She testified she paid this debt but provided no documentation to corroborate this claim. (TR 85-85) The account remains unresolved. (Exhibit S)

SOR 1.j.. Her debt to Creditor #10 of \$2,082 was charged off as a bad debt in November 2000. (Exhibit 3) In April 2004 she said she was unable to pay this debt due to part-time wages and recurring medical expenses. (Answer) She believes this debt is the same as that alleged in 1.d. and 1.h. but provided no documentation to establish this point. (TR 86-89) The account remains unresolved. (Exhibit S)

Applicant offered her views that because many of these accounts were acquired by third party collection agencies, she can dispute these debts as items reported in error. In July 2004 she paid \$2,000 to a credit consulting company to resolve her credit issues; however, she provided no evidence they developed a plan to resolve these debts. (Exhibit S; TR 57-58)

Applicant has established credit with other creditors and has consolidated her student loans which are in forbearance. Although not alleged in the SOR, her financial picture is impacted by the fact that she continues to owe approximately \$73,000 in student loans for her undergraduate, graduate, and law school expenses. (TR 60, 92-93; Exhibit S) In August 2004 Applicant's net income was \$1,116 per month; she had monthly expenses of \$1,114 including \$170 monthly debt

payment to Creditor #2 and \$95 in monthly expenses for medication. (TR 61-62; Exhibit M) In addition she has cashed in her U.S. Savings bonds and IRA and consulted with a credit consultant. (TR 63, Exhibits H, R) Her current expenses do not include rent or food expenses as she lives with a friend. She has a car loan for a 2003 car which was co-signed by her father. (TR 89-90, 98-99) She has two \$500 loans that her friend is paying; she has two credit cards. She owes \$1,478 on one card with a \$1,500 credit limit and is current on her payments. She owes zero on a gas credit card. (TR 93-94) Her health is currently stable with medication. (TR 98)

References

Applicant has favorable reference letters from her sister-in-law and friends. The Associate Dean for Students at a law school also commented favorably on her character. A U.S. magistrate judge for whom she worked in 2001 as a summer extern confirmed that she is a person of great integrity. A former supervisor recommended her for a security clearance. A current supervisor commended her professionalism and effectiveness. (Exhibit D)

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.

Guideline E - Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

Security concerns persist over Applicant's financial circumstances under disqualifying condition (DC) (1) a history of financial problems; subsequently she expressed (DC) (3) an inability or unwillingness to satisfy all of her debts. Applicant admitted that in 1998 she had debts to ten creditors which totaled over \$20,000. While at that point her accounts were current, these financial problems worsened in the 1999 to 2000 period after she was living beyond her means with credit card purchases and then became ill with Graves' Disease. By 2003 Applicant had delinquent debts to ten creditors and had "no intent to pay" any of her delinquent accounts as most of them had been written off. While she initiated a plan to pay two of the ten creditors in 2004, the remaining debts remain unresolved in August 2004.

Applicant offers in mitigation that she was diagnosed with Graves' Disease in March 2000 which led to her unemployment or part-time temporary employment due to her illness. While certainly this was an adverse circumstance, her financial problems pre-date this medical condition: she was substantially in debt at the time of the diagnosis. Therefore, her continuing financial problems cannot be fully mitigated under MC 3. In addition, she never sought assistance even though she believed she might have qualified for disability assistance. Even when she realized she was "overwhelmed with debt," she failed to develop a plan to resolve the debt. In 2003 she reported substantial assets but used only some of them to improve her financial picture.

While Applicant considered filing for bankruptcy, but resisted as she thought that would prevent her from attending law school. She has unresolved debts that totaled over \$20,000. Applicant has failed to mitigate⁽⁴⁾ these financial concerns as she has not made it a priority to resolve these dated debts. While she invested \$2,000 with a credit consulting company in July 2004, she presented no plan to address these debts except for her monthly payments to resolve two of these debts. In addition she owes over \$70,000 in student loans that are currently in forbearance, but add to the overall difficult financial picture. Currently, Applicant has limited income and is unable to afford even rent and food, so she lives with a friend. Her parent helped her finance a 2003 car.

Thus, Applicant has failed to sufficiently demonstrate she is now financially responsible. While she contacted all of her creditors in August 2004, she provided no plan to resolve eight of her outstanding debts. Thus, Applicant has mitigated only the allegations in SOR subparagraphs 1.b. and 1.e. where she has developed a payment plan as under MC 6 she initiated a good-faith effort to repay those creditors. With respect to the other creditors, no repayment plan is in place. Thus she failed to mitigate⁽⁵⁾ overall security concerns over her debts alleged in SOR 1.a. 1.c, 1.d. and 1.f. through 1.k. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 1.

Personal Conduct

Applicant rebutted security concerns under personal conduct. While she failed to reveal all of her personal debts on the SF 86 form, she did disclose the general difficulties with her finances in the general remarks section. The Government failed to establish that any omissions of debts constituted a willful intent to falsify so as to raise security concerns under Personal Conduct. The DSS special agent testified that when he interviewed her he did not believe she had an intent to falsify. Overall Applicant's explanation for why she did not detail all of her credit problems was credible as she made a statement in the general remarks on the form which disclosed her financial difficulties overall. She did not demonstrate the requisite intent to willfully falsify especially in the light of her general reputation for honesty in the workplace and in the community as her reference letters document. She overcame these Government's security concerns as she credibly explained and the DSS agent concurred that she had no intent to falsify. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. under SOR Paragraph 2.

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: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For 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.

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.
2. Applicant claims ten companies are willing to hire her if she is granted a security clearance. (TR 63)
3. See ON II for information on Graves' Disease. Her medical records are also in evidence. (Exhibit G: TR 50-51)
4. **Conditions that could mitigate security concerns include:** 1. The behavior was not recent; 2. It was an isolated incident; 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; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
5. **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.