

DATE: November 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06286

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accrued over \$46,000 in delinquent or past due debts. Before the Statement of Reasons (SOR) was issued, Applicant was already acting to pay or otherwise resolve her past due obligations. As of her hearing in this matter, Applicant had satisfactorily addressed all of the delinquencies alleged in the SOR. Her current financial status is sound and her credit good. She has mitigated the security concerns under Guideline F (financial considerations), and her request for a security clearance is granted.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On August 26, 2004, DOHA issued an SOR to Applicant regarding facts in her background that raise security concerns addressed in the Directive under Guideline F (financial considerations). Specifically, the SOR presented allegations Applicant had filed for Chapter 7 bankruptcy protection in 1982 (SOR ¶ 1.a), had generated about \$46,000 in delinquent or overdue debts in the form of 25 personal credit accounts (SOR ¶¶ 1.b - 1.z), and that a July 2002 personal financial statement showed she had sufficient funds after expenses each month with which to pay down her debts (SOR ¶ 1.aa). Applicant timely answered the SOR (Answer). Asserting she had paid or otherwise resolved most of the alleged debts, she denied all of the SOR allegations except for those in SOR ¶¶ 1.a, 1.c, 1.r, 1.s, and 1.w.

Applicant also requested a hearing. The case was assigned to me on July 5, 2005, and I convened a hearing on August 18, 2005. The parties appeared as scheduled and the government presented six exhibits (GE 1 through 6), which were admitted without objection. Applicant testified in her own behalf and submitted 30 exhibits admitted into the record as AE 1 - 30, and identified by a cover index admitted as AE 31. DOHA received the transcript (Tr) on August 25, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 52 years old and employed by a defense contractor as a program manager for her company's Navy contracts. Applicant seeks to retain the security clearance she has held since 1979, and which she requires as part of her assigned duties. On August 19, 2003, she submitted a security clearance application (SF 86) to initiate a periodic review of her suitability for access to classified information. The ensuing investigation by the Defense Security Service (DSS) produced a credit bureau report and two signed, sworn statements by Applicant that collectively showed Applicant had accrued about \$46,000 in unpaid or overdue debts. Available information also shows Applicant filed for a discharge in bankruptcy in 1982, a fact that was addressed during previous background investigations.

Applicant has been married three times. Her first marriage began in 1972, but ended in divorce in 1977. A second marriage, from 1981 until divorce in 1995, left her saddled with more than \$50,000 in joint personal credit card debts. The couple's divorce decree and property settlement did not adequately protect Applicant from their creditors, and she received no assistance from her ex-husband in this regard. Applicant enlisted the services of a credit counseling service to consolidate and pay the debts, but stopped paying at some point because she felt it unfair that she was paying debts her husband had essentially abandoned to her. However, in 2005, Applicant began consulting with another credit counseling and financial planning firm to manage her assets and avoid similar debt problems in the future. These services are also intended to help Applicant plan for her retirement. A personal financial statement Applicant submitted to a DSS agent in July 2002 showed Applicant had nearly \$1,000 remaining each month after paying her monthly expenses and making monthly debt payments.

Applicant's 1982 bankruptcy action was filed at the behest of her second husband, because he felt Applicant's debt at the outset of their marriage was too high. This had resulted from Applicant's having to raise her daughter alone on a limited income and no spousal support after Applicant's first divorce. However, as her debts were being discharged through bankruptcy, her second husband continued to overuse their joint credit. When they divorced in 1995, he made no effort to pay his portion of the debts, and their creditors sought payment from Applicant.

Applicant married her third husband in 2001. The couple separated after five months, then attempted a reconciliation in 2004. That, too, lasted only five months. Applicant's third divorce is pending. As of the hearing, a house bought during the marriage was in the final stages of being sold through a real estate trust, which was making payments in Applicant's stead.

While purchasing her current residence and applying to refinance the aforementioned marital property, Applicant researched her credit history and began paying off or resolving accounts listed as delinquent. When she received the SOR, she followed up on her earlier research and found, of the debts listed in the SOR, there is no current record of her owing the debts listed in SOR ¶¶ 1.c, 1.j, 1.k, 1.t, and 1.w. Further, the debts listed in SOR ¶¶ 1.h, 1.y, 1.s, and 1.z are duplicates of those listed at SOR ¶ 1.c, which has no record, ¶ 1.f, which Applicant is repaying, ¶ 1.e, which Applicant paid in August 2005, and ¶ 1.d, now an open account in good standing, respectively.

Additionally, the debt alleged in SOR ¶ 1.b, which had been reduced to a judgment against Applicant, was paid in October 2001. Based on Applicant's rehabilitated credit rating, she now has a new credit card from this creditor. The debt listed at SOR ¶ 1.g is a paid collection account representing two delinquent credit cards listed in SOR ¶¶ 1.n and 1.i. Applicant paid the debt listed in SOR 1.l in June 2003. A timeshare account listed in SOR ¶ 1.m as delinquent for non-payment of membership fees has been brought current. The telephone account debt listed in SOR ¶ 1.o was paid in August 2003. Two bills for radiological services listed in SOR ¶¶ 1.p and 1.q were paid in June 2003. A delinquent credit card account listed in SOR ¶ 1.r has been repaid and a new card issued by that creditor. The credit card debt listed in SOR ¶ 1.u was paid through Applicant's credit counseling plan in the 1990s, and a collection account listed in SOR ¶ 1.v was paid in June 2003.

By all accounts, Applicant is an exemplary and highly experienced employee. She was the first civilian defense contractor to be awarded the Navy's Eminent Public Service Award, and she has a track record of on-the-job excellence that spans the last 25 years. She has held a security clearance without incident during her entire professional career.

POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽²⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes 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.⁽³⁾ 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.⁽⁴⁾

To that end, the Directive sets forth adjudicative guidelines⁽⁵⁾ for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of 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 record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here is Guideline F (financial considerations).

CONCLUSIONS

The facts presented through the government's information offered in support of the SOR allegations raise security concerns addressed in the Directive under Guideline F. Specifically, an applicant who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. Failure to reasonably attend to personal finances may also indicate poor judgment and reliability in other facets of one's conduct.⁽⁶⁾ These facts also support application of Guideline F disqualifying condition (DC) 1⁽⁷⁾ and DC 3.⁽⁸⁾

The government is reasonably concerned about Applicant's suitability for continued access to classified, especially in light of her prior discharge of debts in bankruptcy. However, Applicant was already acting to resolve her financial difficulties before the SOR was issued in this case, in large part through her earlier credit counseling, her timely repayment of many of the debts, and through her research efforts attendant to her mortgage and refinancing efforts since 2001. Based on the way Applicant's indebtedness came about after her second divorce, on the fact she has recently been on a sound financial footing, and on her remarkably proactive approach to her financial and personal difficulties, Guideline F mitigating condition (MC) 1,⁽⁹⁾ MC 3,⁽¹⁰⁾ MC 4,⁽¹¹⁾ and MC 6⁽¹²⁾ apply here.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Applicant amassed a significant amount of personal debt due almost entirely to the failure of her first two marriages. However, she took action after each divorce to address those debts, and was already well on her way to satisfying each delinquency when the SOR was issued. She has since resolved each of the delinquencies alleged and has taken further steps to preclude a repetition of her past financial problems. Any reasonable doubts arising from the results of Applicant's most recent background investigation have been satisfactorily addressed and she has overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): 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

Subparagraph 1.h: For the Applicant

Subparagraph 1.i: For the Applicant

Subparagraph 1.j: For the Applicant

Subparagraph 1.k: For the Applicant

Subparagraph 1.l: For the Applicant

Subparagraph 1.m: For the Applicant

Subparagraph 1.n: For the Applicant

Subparagraph 1.o: For the Applicant

Subparagraph 1.p: For the Applicant

Subparagraph 1.q: For the Applicant

Subparagraph 1.r: For the Applicant

Subparagraph 1.s: For the Applicant

Subparagraph 1.t: For the Applicant

Subparagraph 1.u: For the Applicant

Subparagraph 1.v: For the Applicant

Subparagraph 1.w: For the Applicant

Subparagraph 1.x: For the Applicant

Subparagraph 1.y: For the Applicant

Subparagraph 1.z: For the Applicant

Subparagraph 1.aa: 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.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. *See Egan*, 484 U.S. at 528, 531.
4. *See Egan*; Directive E2.2.2.
5. Directive, Enclosure 2.
6. Directive, E2.A6.1.1.
7. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
8. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
9. Directive, E2.A6.1.3.1. The behavior was not recent;
10. 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);
11. Directive, E2.A6.1.3.4. 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;
12. Directive, E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.